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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204897
Party	Plaintiff John G. Marino
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the matter of trademark application Serial No. 85411955
For the mark LAGUNA LAKES Published in the Official Gazette on
February 28, 2012**

Consolidated Opposition No:91204897

91204941

JOHN GERARD MARINO

v.

LAGUNA LAKES COMMUNITY ASSOCIATION, INC.

**JOHN GERARD MARINO'S
NOTICE OF RELIANCE**

John Gerard Marino ("Marino") through his undersigned counsel hereby files this Notice of Reliance pursuant to TBMP 704.02. Specifically, Marino relies upon the following deposition transcripts of officers and directors and 30(b)(6) representatives of Laguna Lakes Community Association, Inc.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by electronic mail on this 10 day of October 2014 to: Donna M. Flammang, Esq., Brennan Manna & Diamond, P.L., 3301 Bonita Beach Road, Suite 100, Bonita Springs, FL 34134.

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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
Post Office Box 1451
Alexandria, Virginia 22313-1451

JOHN G. MARINO,

vs.

OPPOSITION NO. 91204897
OPPOSITION NO. 91204941

LAGUNA LAKES COMMUNITY ASSOCIATION, INC.,

DEPOSITION OF: PATRICK TARDIFF
(As Corporate Representative and
Individually)

DATE TAKEN: August 23, 2013

TIME: 10:16 a.m. to 2:35 p.m.

LOCATION: Von Ahn Associates, Inc.
13241 University Drive
Suite 104
Fort Myers, Florida

BEHALF OF: The Plaintiff

REPORTED BY: Marianne E. Sayers, RPR, CRR,
Court Reporter and Notary Public
State of Florida

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10

11

By: Richard S. Annunziata, Esquire

12

For the Defendant(s): (Via Conference Phone)

13

BRENNAN, MANNA & DIAMOND
75 East Market Street
Akron, Ohio 44308

15

16

By: W. Scott Harders, Esquire
Chad Rothschild, Esquire

17

18

ALSO PRESENT: John G. Marino

19

20

21

I N D E X

22

ATTORNEY	DIRECT	CROSS	REDIRECT	RECROSS
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23

MR. BEHREN	6
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24

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1 MR. BEHREN: We have a corporate
2 representative deposition that's scheduled to
3 start at 10:00 a.m. this morning. It's 10:15.
4 Everybody's here, we are ready to get started.
5 However, at ten o'clock last night, apparently for
6 the first time, counsel in Ohio decided, even
7 though they have a partner here present in person,
8 that they need to have electronic versions of the
9 exhibits. The first time they requested them was
10 approximately ten o'clock last night, even though
11 we were with them in depositions all day.

12 So, my client is making an effort to see
13 whether or not these things can be sent to them in
14 electronic version here at the last moment, and
15 we'll see if it's -- if we can do it or not, but
16 we are proceeding as scheduled regardless of
17 whether we can get them the exhibits or not.

18 MR. ANNUNZIATA: For the record, for
19 clarification, this is Richard Annunziata.

20 Lead counsel is Scott Harders in this case
21 and Chad Rothschild, and the -- and also Donna
22 Flammang. I'm here as a courtesy. And while I --
23 it is true I am here in person, lead counsel needs
24 to be advised, informed, of the documentation
25 that's being presented at today's deposition.

1 So, I will leave it to Scott to add anything
2 else with regard to any issues involving his need
3 to see documentation and proceeding if we are not
4 able to send those documentation, but let's wait
5 and see if we -- if we can, in fact, do away with
6 that issue by having them actually sent to
7 Mr. Harders.

8 MR. BEHREN: If lead counsel was so
9 concerned, lead counsel should have been here in
10 person, or, alternatively, they should have said
11 something more than -- earlier than 10:00 p.m. the
12 night before, and I'm sure then that the exhibits
13 could easily have been scanned to them.

14 MR. ANNUNZIATA: From what I understand,
15 this matter has been expedited over the past week
16 and the parties have been working diligently to
17 try to work together.

18 MR. BEHREN: We were with them all day
19 yesterday. What were they waiting for? Why did
20 they first ask at ten o'clock at night?

21 MR. ANNUNZIATA: Okay. We can go back and
22 forth all day long on these kind of comments and
23 gestures, but we are just trying to clarify for
24 the record where we are standing.

25 (Off-the-record discussion.)

1 (A recess was taken from 10:19 a.m. to 10:55
2 a.m.)

3 Thereupon,

4 PATRICK TARDIFF,

5 a witness, called by counsel for Plaintiff, having
6 been first duly sworn by the court reporter, was
7 examined and testified as follows:

8 THE WITNESS: I do.

9 DIRECT EXAMINATION

10 BY MR. BEHREN:

11 Q Would you state your name for me, please?

12 A Patrick Tardiff.

13 Q And that's spelled T-A-R-D-I-F-F?

14 A Correct.

15 Q Okay. Have you ever given a deposition
16 before?

17 A No.

18 Q Well, aren't you the lucky one?

19 Have you ever been a party to a lawsuit
20 before?

21 A Yes.

22 Q Civil, criminal, both, neither?

23 A Civil.

24 Q Personally?

25 A Yes.

1 Q What was that about?

2 A Mostly an accident that had occurred. And
3 then there was one that was -- just recently I had an
4 EEOC complaint against me that the -- the plaintiff just
5 blew it off, threw the complaint out there and never
6 returned to say or do anything. He had nothing, so
7 that's why.

8 Q Okay. So, the first you said was an
9 accident, like personal injury?

10 A Personal injury.

11 Q Were you the plaintiff or the defendant?

12 A The plaintiff.

13 Q Was that a case here or -- in Florida, or --

14 A No.

15 Q -- somewhere else?

16 A Somewhere else.

17 Q Where was that?

18 A Jersey.

19 Q Where in Jersey, what exit?

20 A Eighty-two.

21 Q Well, I'm from Jersey, so I have to ask
22 that.

23 A Are you?

24 Q Yeah.

25 A All right.

1 Q Did that settle?

2 A Yes.

3 Q So, it was actually -- there was a lawsuit
4 filed, but you never got around to the stage where there
5 was depositions taken, and --

6 A No.

7 Q -- eventually the case settled?

8 A It just settled out, yeah.

9 Q It was settled before the lawsuit was filed?

10 A Yeah -- no, it settled before -- well, the
11 lawsuit was filed and then pretty much it -- it
12 basically settled.

13 Q Okay. And now the EEOC complaint, was that
14 here, or was that --

15 A Yes, that was here.

16 Q What was the EEOC complaint about? You said
17 somebody made an EEOC complaint about you? I'm assuming
18 it was an employee?

19 A Yeah. Our first clubhouse manager that
20 worked for Alliant Property Management that came in
21 direct contact with me, decided that when he got fired
22 he was going to do whatever he could to get some money,
23 so he turned around and put a complaint against me, and
24 then -- having no basis for anything that was said. And
25 we, as in the board and as in Alliant Property

1 Management, had a book of stuff that -- reasons why he
2 got fired, and that's really why -- just a simple
3 complaint was made, and then he did nothing with it.

4 Q What was his name?

5 A Jose Loventon.

6 Q Lovington?

7 A Loventon.

8 Q Lovington?

9 A Yeah.

10 Q L-O-V-I-N-G-T-O-N?

11 A E-N. L-O-V-E-N-T-O-N.

12 (Off-the-record discussion.)

13 THE WITNESS: L-O-V-E-N-T-O-N.

14 BY MR. BEHREN:

15 Q Loventon?

16 A Yeah.

17 Q L-O-V-E-N-T-E-N?

18 A O-N.

19 Q O-N?

20 A O-N.

21 Q Loventon, all right.

22 A Loventon.

23 Q That was an EEOC complaint that was filed
24 against you or against the association?

25 A It was filed against me, the association,

1 and Alliant Property Management.

2 Q Was he an employee of Alliant, or was he --

3 A Yes.

4 Q -- was he an employee of the association?

5 A Yes, he --

6 Q And let me -- let me give you some tips,
7 some deposition pointers.

8 A Okay.

9 Q All right? Because you haven't done this
10 before.

11 So, when you answer the question, please try
12 to answer in a verbal fashion, yes --

13 A Okay.

14 Q -- no --

15 A Right.

16 Q -- I don't know, something the court
17 reporter can type up; all right?

18 A Okay.

19 Q When I'm asking questions --

20 A Uh-huh.

21 Q -- try to wait until I finish the question.
22 I know that normally when we are talking, it's kind of
23 like having a conversation, we might overlap on each
24 other.

25 A Okay.

1 Q It won't make for a clear record, and she
2 won't be able to necessarily hear everything everybody's
3 saying; all right?

4 A I got you.

5 Q So, if I tell you hold on a second, let me
6 finish the question, I'm not trying to be rude or give
7 you a hard time, I just want to make sure she --

8 A Right.

9 Q -- gets a clear transcript; all right?

10 A Okay.

11 Q And also, if you -- if I ask you a question
12 and you say uh-uh, uh-huh --

13 A Okay.

14 Q -- if I say, is that yes, is that no, again
15 I'm not trying to give you a hard time --

16 A Okay.

17 Q -- I just want to make sure we have a clear
18 transcript; all right?

19 A I understand.

20 Q There may be points in time potentially
21 where your attorney may object to a question. Unless
22 they -- normally, unless they specifically instruct you
23 not to answer the question, you can normally answer the
24 question. Generally they are making some type of an
25 objection to preserve for a later point in time.

1 A Okay.

2 Q All right?

3 A Yep.

4 Q Any other questions at all about the general
5 procedures?

6 A No.

7 Q Okay. Anyway, so this Jose was an employee
8 of Alliant, but then brought an EEOC claim against the
9 association and against you?

10 A Correct.

11 Q Okay. And that actually went through a full
12 investigation? Did they -- did they issue a right to
13 sue letter, do you know?

14 A No, they did not.

15 Q There was no right to sue letter issued?

16 A It went -- it went a year, and the EEOC went
17 back to Mr. Loventon to have him do something with the
18 case, and he did nothing. So, I guess at that point
19 there was a right to sue for ninety days, or something,
20 I -- I --

21 Q Okay.

22 A Yeah.

23 Q Was there a -- did you hire counsel to
24 respond to the EEOC charge?

25 A The D&O insurance picked up the counsel,

1 yes.

2 Q D&O insurance, okay.

3 A Yeah.

4 Q So, it wasn't this particular -- this same
5 law firm, Ms. Flammang's law firm, correct?

6 A No.

7 Q Do you remember who the lawyers were on that
8 case?

9 MR. ROTHSCHILD: Scott, this is Chad
10 Rothschild.

11 I just want to clarify. Are we asking
12 questions of a 30(b)(6) witness?

13 MR. BEHREN: I'm sorry?

14 MR. ROTHSCHILD: Are we asking -- are you
15 asking questions of a 30(b)(6) witness?

16 MR. BEHREN: Well, given the fact that I
17 noticed Mr. Tardiff for his deposition and he's
18 also, I'm assuming -- as I understand it, he has
19 been produced as the corporate rep also, correct?

20 MR. ROTHSCHILD: Right. We just want to
21 know which lines of questions you're going into.

22 MR. BEHREN: Well, I plan on combining
23 Mr. Tardiff and the corporate rep's questions into
24 one deposition, because I don't really see that it
25 makes sense, especially given the fact now that we

1 started an hour late, to --

2 MR. ROTHSCHILD: That's not --

3 MR. BEHREN: -- break down the corporate rep
4 deposition versus Mr. Tardiff's deposition.

5 MR. ROTHSCHILD: That's fine with us. Can
6 you clarify when you're asking questions of him as
7 a 30(b)(6) witness and when you're asking
8 questions of him as an individual?

9 MR. BEHREN: That's fine.

10 MR. ROTHSCHILD: Okay, thank you.

11 BY MR. BEHREN:

12 Q Okay. Anyway, do you remember the -- who
13 the law firm was on that?

14 A I don't remember the name, because I -- I
15 don't remember the name.

16 Q Okay. And so -- and, again, you were never
17 actually sued?

18 A No.

19 Q All right. Any other instances where you
20 have been a party to a lawsuit, civil, criminal --

21 A No.

22 Q -- bankruptcy, anything of that nature?

23 A No.

24 Q Have you ever been arrested or convicted of
25 a crime at all? And, again, I'm not trying to give you

1 a hard time, but these are general questions that we
2 need to ask in deposition.

3 A Is there a time frame on that?

4 Q How about while you were an adult? I'm not
5 really particularly interested in something -- you know,
6 if you were 13 years old, or something like that.

7 A No, but I'm trying to remember. It was 20
8 years ago easily, yeah.

9 Q Was that an arrest, or a --

10 A An arrest.

11 Q -- conviction, or what?

12 A It was an arrest.

13 Q What was it for, generally?

14 A DUI.

15 Q Okay. That was back in Jersey, too?

16 A Yes, it was.

17 Q Okay.

18 A Might even have been 25 years.

19 Q Okay. Any --

20 A I don't remember.

21 Q Anything else?

22 A No.

23 Q All right. And, again -- and I'm
24 assuming -- and you're not under the -- not under the
25 influence today of any drugs --

1 A No.

2 Q -- alcohol, or anything --

3 A No.

4 Q And wait, just --

5 A Go ahead.

6 Q Wait until I finish the question.

7 A Okay.

8 Q And, again, this is not a question to try to

9 harass you. I just --

10 A Yeah.

11 Q -- want to make sure there's nothing that

12 would impede your ability to recall things or answer

13 questions today, correct?

14 A Correct.

15 Q Okay. And you're currently a resident of

16 Laguna Lakes?

17 A Yes, I am.

18 Q What parcel are you in?

19 A Pebble Beach.

20 Q And there's -- there's multiple parcels at

21 Laguna Lakes?

22 A Yes, there is.

23 Q What are the parcels at Laguna Lakes?

24 A Pebble Beach.

25 Q Uh-huh.

1 A Monterey, and Santa Barbara, Beverly Hills.

2 MR. BEHREN: Sorry, I'm just trying to get
3 this thing out of the way here.

4 BY MR. BEHREN:

5 Q How long have you been in Laguna Lakes for,
6 approximately?

7 A Approximately nine years.

8 Q Did you buy new at Laguna Lakes?

9 A Yes, I did.

10 (Off-the-record discussion.)

11 BY MR. BEHREN:

12 Q So, you actually bought this home in Beverly
13 Hills, you -- it was construction --

14 A No, Pebble Beach.

15 Q Excuse me, in Pebble Beach.

16 So, bought it new from who?

17 A Transeastern.

18 Q That was Transeastern Homes?

19 A Yes.

20 Q Brought it preconstruction, or --

21 A No.

22 Q Tell me about how you bought it.

23 A I took a trip down to Florida in October of
24 '03 -- or '04.

25 Q Right.

1 A And eventually made my way into Laguna
2 Lakes. Found a unit, that one didn't work out. Found
3 another unit, that one didn't work out. And then I
4 ended up with this particular unit.

5 Q Okay. And you were living in Toms River at
6 the time?

7 A That's correct.

8 Q Okay. And why did you move from New Jersey
9 down here?

10 A I have a -- severe medical injuries that --
11 I really had to relocate out of the cold, damp weather.

12 Q Okay. When did you first start to serve on
13 the board of Laguna Lakes?

14 A December -- January of 2011.

15 Q All right. And let me show you -- I don't
16 have extra copies of this, but I'm going to refer you
17 over to Laguna Lakes production that they gave us in the
18 case.

19 Here, take a look at -- I'm going to show
20 you first -- the first page here -- some of the stuff
21 looks like it actually maybe came from you.

22 A Uh-huh.

23 MR. ANNUNZIATA: I just want to take a look
24 at it, if I may.

25 MR. BEHREN: It's a -- it's a 175-page file

1 here, but --

2 MR. ANNUNZIATA: All right. Page 1 is
3 just -- are you answering just on page 1, or the
4 whole file?

5 MR. BEHREN: I'm going to go through the
6 whole thing with him.

7 MR. ANNUNZIATA: Okay.

8 UNIDENTIFIED SPEAKER: We have a copy of it.

9 MR. ANNUNZIATA: Yeah, it's LL-1 through --
10 okay, you know what he's talking about. I was
11 just trying to give you a designation so you can
12 follow, that's all.

13 UNIDENTIFIED SPEAKER: We got it. Thank
14 you.

15 MR. ANNUNZIATA: You got it.

16 It's on his iPad, for the record. When I
17 say his, opposing -- Mr. Behren's iPad.

18 BY MR. BEHREN:

19 Q All right. So, looking at LL-1, which is
20 the first page of the production that Laguna Lakes gave
21 us in this case --

22 MR. ANNUNZIATA: The page keeps turning for
23 him.

24 MR. BEHREN: Yeah, it's -- it was produced
25 to me also sideways, but --

1 MR. ANNUNZIATA: Got you.

2 THE WITNESS: Right.

3 BY MR. BEHREN:

4 Q What is that first page there that's stamped
5 LL-1?

6 A That is the sign entranceway of the main
7 gate at Laguna Lakes. There's also a clubhouse picture,
8 front clubhouse picture, the back of the -- of the pool.
9 I believe that's the lake at Monterey Lakes, and a palm
10 tree.

11 It's also the home page of the website.

12 Q All right. What's the website? What's the
13 address of that website?

14 A LagunaLakesCommunityAssociation.com.

15 MR. BEHREN: And just to clarify something
16 else here -- and just for the record, we'll mark
17 the LLCA production, I guess, as Exhibit B, or I'm
18 going to reference to it as Exhibit B.

19 (Deposition Exhibits A and B were marked for
20 identification.)

21 BY MR. BEHREN:

22 Q Let me show you Exhibit A, which is the
23 Re-Notice of Taking Depositions.

24 A Okay.

25 Q And my understanding is that you are being

1 produced here today both as the corporate rep of Laguna
2 Lakes Community Association, Inc. --

3 A That's correct.

4 Q -- with the most knowledge of the issues on
5 attached Exhibit A, and then also individually; is that
6 correct?

7 A To my knowledge, yes.

8 Q Okay. Well, let me ask you this: One of
9 the things I'm -- with regard to Laguna Lakes Community
10 Association, you said it was dot com, correct?

11 A Correct.

12 Q All right. Were you involved at all in
13 creating that webpage or registering that website?

14 A No, I was not.

15 Q Okay. Who was?

16 A I couldn't even tell you.

17 Q Okay.

18 A That was long before I.

19 Q Do you know when it was created?

20 A I don't have an exact date. I would -- I
21 don't have an exact date. It's been a good number of
22 years. I can't -- I can't -- I can't -- I'm trying to
23 recall whether it was from the very beginning or not. I
24 can't -- I can't recall that.

25 Q Okay. So, you would agree, though, that

1 Laguna Lakes Community Association does not use, for
2 their webpage, the domain LagunaLakes.com, correct?

3 A That's correct.

4 Q Do you know why not?

5 A No, I don't.

6 Q Do you know whether that was the domain that
7 was used by Transeastern for the sale of Laguna Lakes
8 back when the community was first started?

9 A No, I do not.

10 Q Do you recall there being any discussions at
11 any board meeting since you have been on the board about
12 acquiring LagunaLakes.com?

13 A Yes, there was. No, not -- LagunaLakes.com,
14 or -- no --

15 Q Okay.

16 A -- not that, not --

17 Q Was there discussion since you have been on
18 the board about acquiring some other domain name for --

19 A Not that --

20 Q -- the association?

21 A I was -- I was taking it in a different
22 direction. Had nothing to do with the domain name. No
23 one ever decided or talked about going with a domain
24 name whatsoever.

25 Q Okay. Do you recall any discussions

1 recently, since you have been on the board, about the
2 Laguna Lakes website?

3 A About the website?

4 Q Yeah.

5 A At a board meeting?

6 Q Yeah. Do you -- since you have been on the
7 board, do you --

8 A Yeah.

9 Q -- recall board meeting discussions about
10 the website? For instance, possibly its content,
11 additions to it, deletions to it, or anything of that
12 nature?

13 A That's not a normal -- it would -- no, I
14 don't believe there was.

15 Q Okay. Just to clarify something else, too,
16 you have been on the Laguna Lakes board since when,
17 approximately?

18 A January 31st of 2011.

19 Q Okay. And since you have been on the board
20 on January 31st, 2011, who has served on the board with
21 you?

22 A The first -- 2011, 2012, was myself, Bob
23 Hajicek, Jeff Kelly, Donna Flammang and --

24 Q Hold on one second. Wait, wait, wait.

25 Bob Hajicek?

1 A Uh-huh.

2 Q Jeff Kelly?

3 A Correct.

4 Q Donna Flammang, uh-huh.

5 A And Mary Ann Cowart.

6 Q Okay.

7 A And then --

8 Q For 2012, '13, did that change?

9 A Yes. In January of 2013, it was myself, Bob
10 Hajicek, Walter Sargent, Fabian Ruiz.

11 Q Hold on one second.

12 Walter Sargent?

13 A Correct.

14 MR. BEHREN: Can you guys -- what are you --
15 are you guys doing something on the line there? I
16 hear like either a car, or a washing machine, or
17 something loud. Can you stop whatever you guys
18 are doing over there, please?

19 UNIDENTIFIED SPEAKER: Not doing any laundry
20 up here, don't worry about that.

21 MR. BEHREN: I know, I figured, but it
22 sounded like a laundry -- like a washing machine.

23 MR. ANNUNZIATA: Actually, it does.

24 MR. HARDERS: Okay. I mean, it might have
25 been when the air conditioning unit just kicked

1 on. That's the only thing I can think of. So,
2 maybe -- maybe we can turn down the sensitivity on
3 the phone.

4 MR. BEHREN: Okay.

5 THE COURT REPORTER: And I don't know who it
6 is speaking on the phone.

7 MR. HARDERS: That was Scott Harders.

8 (Off-the-record discussion.)

9 BY MR. BEHREN:

10 Q So, going back again, so 2013 was -- it was
11 Bob H, yourself?

12 A Uh-huh.

13 Q Walter Sargent, you said?

14 A Correct.

15 Q Who else?

16 A Fabian.

17 Q Fabian?

18 A Ruiz.

19 Q Fabian Ruiz is the name?

20 A Correct.

21 Q Okay.

22 A And Robert Buchanan.

23 Q Okay. And do you know why Mary Ann stopped
24 being on the board?

25 A Yeah.

1 Q Why?

2 A Two years, it was enough.

3 Q I mean, was it --

4 A That was --

5 Q Did she want to be on the board again, or

6 was she --

7 A No.

8 Q -- basically --

9 A No, she had enough.

10 Q -- ejected?

11 A No.

12 Q She'd had enough?

13 A She had enough.

14 Q Okay.

15 A No. If she wanted to be on, she would have

16 been on. Any one of them, if they wanted to stay on,

17 they -- they probably would have been kept on.

18 Q Okay. So, Donna Flammang also, you're

19 saying, she --

20 A No.

21 Q -- it was her voluntary decision to --

22 A Yes.

23 Q -- get off of the board?

24 A Yes.

25 (Off-the-record discussion.)

1 BY MR. BEHREN:

2 Q And same thing -- what about Jeff, same
3 thing, as far as you know, a voluntary decision to get
4 off the board?

5 A Yes.

6 Q Okay. Now, going back to LL-1 here, I guess
7 it has resident log in on the website. What does --
8 what feature does resident log in allow to you do?

9 A As a resident, you could actually log in.

10 Q And do what?

11 A Yeah, access --

12 Q I figured that that's what it meant, but
13 what can you --

14 A Access --

15 Q -- actually do if you log in?

16 A -- to the website.

17 Q What's on the website for residents that's
18 not otherwise available to the public?

19 A Just general information about Laguna,
20 around Laguna, documents for Laguna.

21 Q Okay. Documents such as what?

22 A Meeting minutes would be on there. I'm
23 trying to think of what else.

24 Q Yeah. Again, I'm just trying to figure
25 out --

1 A I know, but I don't take care of the
2 website, and I rarely go on that, to tell you the God's
3 honest truth. So, what exactly is on there as far as
4 documents would go, I -- I'm trying to think, and I
5 can't think of anything else.

6 Q Okay. Online payments, I'm assuming what,
7 that allows to you make --

8 A Yes, it does.

9 Q -- association payments?

10 A Yes.

11 Q Now -- and how does that work? Does -- do
12 each of the residents have to pay to the Laguna Lakes
13 master association and the parcel associations, or is
14 there one payment to Laguna Lakes master that gets then
15 parsed out to the parcel associations?

16 A As of right now, it's one payment to the
17 master, one payment to the parcel. However, in the
18 first couple of years, in the beginning, Pebble Beach
19 used to make one payment and then Pebble Beach would
20 make the payment to the master.

21 Q Any idea why that was changed?

22 A They couldn't -- because you have 236 units
23 in Pebble Beach, condo units. And if one, two, ten, 20,
24 50 of them are not making the payments, Pebble Beach,
25 the association, is still on the hook to the master for

1 that money.

2 Q Uh-huh.

3 A So, all being fair, they made the agreement
4 way back when to just divvy it out.

5 Q Okay.

6 A And it's a good thing for them, because that
7 association would have flushed down the toilet when the
8 crash happened.

9 Q Okay. So that -- the parcel associations
10 then are kind of autonomous from the master association?

11 A That's correct.

12 Q Okay. So, what is the master association
13 responsible for, or administers, versus the parcel
14 association?

15 A How do -- the master takes care of all of
16 the amenities.

17 Q Amenities you mean what, clubhouse?

18 A Clubhouse, the pool, tennis courts,
19 volleyball courts, the building itself.

20 Q The building, you mean where the clubhouse
21 is?

22 A The clubhouse building itself.

23 Q Uh-huh.

24 A There is a fishing pier there, take care of
25 that.

1 We also take care of the front entryway
2 guardhouse and the gates that operate to allow people to
3 enter and exit. There is a back gate, we also operate
4 that.

5 And we also take care of the roads.

6 Q The roads?

7 A Uh-huh.

8 Q The roads within the whole area --

9 A Yeah.

10 Q -- including the parcel associations?

11 A Yes, all -- all of the roadways in Laguna
12 Lakes.

13 Q And what about the parcel association, what
14 do they do? What are --

15 A Well --

16 Q -- they responsible for?

17 A Each parcel would be different. The condos,
18 obviously, are different than everyone else.

19 Q The condos would have more to maintain, I'm
20 assuming --

21 A More --

22 Q -- because it's -- you're talking --

23 A Right.

24 Q -- about common walls, roofs, things of that
25 nature?

1 A (Nodding head affirmatively.)

2 Q What about the non-condo associations?

3 Generally what are the parcel associations responsible
4 for?

5 A The non-condos, I believe that they pay an
6 association fee and -- and that they -- they have their
7 landscaping. I'm not quite certain, because I don't
8 live over there. I -- I tried to stay way away from
9 parcel --

10 Q You live, again, you said in Pebble --

11 A Pebble Beach.

12 Q -- Beach, which are condos?

13 A Correct.

14 Q So, you're not sure what's covered by the
15 parcel association --

16 A No. I'm very sure of what the Pebble Beach
17 is, but not the -- I know that they take care of -- the
18 homes take care of the landscaping --

19 Q On the individual properties.

20 A -- of the individual properties, somewhat
21 down the line.

22 Q Okay.

23 A Pebble Beach is the condo, it's much
24 different. They have -- they take care of the entire
25 building basically. Everything from the Sheetrock out

1 is the association.

2 Q Okay. Does the -- and do each of the
3 parcels, they have signage going into the parcels?

4 A Yes.

5 Q What, the name of whatever the parcel is?

6 A Correct.

7 Q The Laguna Lakes logo on those signs?

8 A I believe they are. I -- that one, I'm not
9 sure, but I believe they are.

10 Q Is the -- the parcel associations are
11 allowed to use the Laguna Lakes logo?

12 A Are the parcel -- I would imagine that --

13 Q Let me ask you this: Did the board, as far
14 as you know, ever complain to any parcel association
15 about them using the Laguna Lakes name or logo?

16 A I can't say that I have that knowledge, no.

17 Q Okay. And who -- as far as you know, who
18 was using the Laguna Lakes name and logo first, the
19 parcel associations or the master association?

20 A I don't know exactly, but I don't know that
21 the parcel associations are actually using the name or
22 logo.

23 Q Well, the logo is on a bunch of the signs
24 for the parcel associations, correct?

25 A I -- again, I'm going off of my memory, and

1 I really specifically can't recall if they are or are
2 not on that -- the signs. They very well could be. I'm
3 trying to imagine it, and I can't be sure.

4 Q Okay. Going back again to LL-1, the website
5 for Laguna Lakes Community Association, we have here
6 request log in, online payments, residents log in,
7 amenities, which I guess sets out what the amenities
8 are.

9 A Uh-huh.

10 Q Homes, condos for sale --

11 A Correct.

12 Q -- what's that link all about?

13 A That's for the residents to list a home or
14 condo that is for sale, so --

15 Q It's supposed to be only residents who are
16 selling on their own?

17 A Correct. No. Residents that have their
18 house for sale can post that on there.

19 Q Whether they have a Realtor or not?

20 A Yes.

21 Q So, it's not only for those who are just
22 selling by owner, it's for anybody who wanted to sell
23 their unit that lives in Laguna Lakes?

24 A To my knowledge, it is. And you -- and
25 you -- and that's the only restriction, is that it has

1 to be a home in Laguna.

2 Q Okay. So, but the association is not
3 actually selling then the homes, the individual
4 association member would be selling the homes and you
5 all are offering the ability to use the website as a
6 benefit to being an association member?

7 A Correct.

8 Q All right. Would that be the same also with
9 regard to the rental tab? This would be, again,
10 individual unit owners who are looking to rent units?

11 A I believe so, yes.

12 Q Okay. And, again, it's not that the -- the
13 association has nothing to do with renting these units,
14 it's just the -- again, an advertising benefit provided
15 to association members?

16 A That is correct.

17 Q Okay. So, via this website, you would agree
18 that Laguna Lakes Community Association is not selling
19 anything, correct?

20 A Correct.

21 Q They are not renting anything, correct?

22 A That's not correct.

23 Q What are they renting?

24 A The clubhouse.

25 Q Okay. So, they rent the clubhouse?

1 A That's correct.

2 Q Okay.

3 A Uh-huh.

4 Q That's not something that they are renting
5 on the website?

6 A I don't -- normally, you would -- if you
7 want to rent the clubhouse, you go to the clubhouse.
8 The clubhouse manager has a sheet that you would have to
9 fill out, put a deposit down, and make the payment, and
10 then that would be it.

11 Q Okay. But that's not something that's --
12 again, that you can do, I guess, via this website,
13 correct?

14 A I -- I -- I'm not -- I -- I don't think you
15 can do it by there. I think there is information about
16 that on --

17 Q About renting it?

18 A About renting it, on the website.

19 Again, I'm not -- I don't frequent the
20 website, so --

21 Q Okay. The next page of the production here,
22 LL-2, which was produced by your attorneys, it says
23 Santa Barbara Collection, Avalon, on the bottom it says
24 Laguna Lakes and has the logo?

25 A Uh-huh.

1 Q What -- do you know what this particular
2 page is?

3 A I would imagine this is from the very
4 beginning of Transeastern having their pamphlets.

5 Q So, you believe this would have been
6 Transeastern material used to sell, I guess, homes in
7 the Santa Barbara parcel?

8 A Yes, I do believe that.

9 Q And Avalon would have been a model in the
10 Santa Barbara parcel?

11 A Yes.

12 Q And then the next page here, Santa Barbara
13 Collection features. And then once again it has the
14 Laguna Lakes, I guess, stylized name here, which is
15 LL-3. This is also Transeastern materials, as far as
16 you know?

17 A As far as I know.

18 Q Okay. And just to clarify, LL-2 and LL-3,
19 these are not materials that were generated or used by
20 the Laguna Lakes Community Association, correct?

21 A That is correct.

22 Q So, just to clarify again, too, the Laguna
23 Lakes Community Association's sole function, as I
24 understand it, would be to collect assessments from
25 members and maintain the various amenities that you just

1 listed for me before, correct?

2 A The main function would be to do that,
3 yes --

4 Q So, there --

5 A -- but there are other functions.

6 Q Such as some level of architectural control,
7 I believe, is in the master declaration, correct?

8 A That's correct.

9 Q Rental -- renters, do they have to also
10 clear with the master association, or is that the parcel
11 association?

12 A No, that's the parcel association. But, as
13 a renter, they are obligated in the documents to make
14 sure that the master board has a copy of the lease
15 before they take occupancy.

16 Q Okay. Anything else that you can think of
17 that the master association is responsible for other
18 than what we have already discussed?

19 A Just trying to keep the -- the assets of the
20 overall community itself safe and good -- safe shape to
21 use, to over --

22 MR. HARDERS: This is Scott Harders. The
23 witness is cutting in and out a little bit. If I
24 could just have you --

25 THE WITNESS: Sit forward?

1 MR. HARDERS: -- to the microphone, or a
2 little louder. It's intermittent.

3 THE WITNESS: Okay, sorry.

4 MR. HARDERS: That's okay.

5 THE WITNESS: Let me see.

6 We would run meetings. Normally it's one
7 month. That's not to say that it would -- it has
8 to be, just that normally that's what it is.

9 We also keep tabs on all the vendors.

10 BY MR. BEHREN:

11 Q What do you mean the vendors? What kind of
12 vendors?

13 A Well, we have landscaping that we have to
14 take care of. We have a pool maintenance, that they
15 have to come in and take care of the pool. Somebody's
16 got to be watching them, to make sure they are doing
17 what they are doing --

18 Q Okay.

19 A -- otherwise --

20 And then they also have to check out the
21 gates. Like I said, we have a firm that takes care of
22 the gates for us, and there's cameras, there's --

23 Q Those aren't guard-manned gates? Those are
24 like -- what are they, like automated gates of some
25 sort?

1 A Yes, they are automatic gates. They used to
2 be --

3 Q Where you have to punch in a code or
4 something, or --

5 A There used to be a guard there. Years
6 previously they decided to get rid of the guard and put
7 automatic gates. It's a two-gate system to get through.
8 There is one that is a bar code, and there is a scanner
9 that scans your bar code, and the car -- it's placed on
10 your car, that goes through.

11 There is another entryway that actually has
12 a phone entry, where you would actually call someone to
13 get in.

14 Q And the -- the bar code scanners and what
15 have you, is that the responsibility of the master
16 association?

17 A That is correct.

18 Q Okay.

19 A There's also proximity cards that go with
20 the -- with -- with those bar codes.

21 Q Okay.

22 A Bar codes are on one. There is a proximity
23 card that you can use to get through the other, or the
24 back gate also. And all the magnetic locks are all
25 interlocked onto that proximity card.

1 Q Okay. So now with regard -- going back
2 again to the production that you guys produced, document
3 LL-4 here appears to be a map that's a -- the west coast
4 of Florida here, which I guess shows where Laguna Lakes
5 is, and it also has the name, the logo.

6 A Uh-huh.

7 Q It says Transeastern Homes, correct?

8 A Yes.

9 Q All right. So, that would have been, again,
10 as far as you know, materials produced used by
11 Transeastern Homes in the sale and development of Laguna
12 Lakes?

13 A Yes.

14 Q And then the next page is a picture of some
15 sort, LL-5, called Club Laguna, Laguna Lakes?

16 A Uh-huh.

17 Q Is Club Laguna supposed to be the
18 clubhouse/pool area?

19 A Correct.

20 Q Okay. And this picture in Club Laguna, is
21 this something that the association prepared, or as far
22 as you know, something that Transeastern would have
23 prepared to promote the sale and development of Laguna
24 Lakes?

25 A I would guess that it was Transeastern.

1 Q You don't know for a fact, though?

2 A No, I do not.

3 Q Okay. The next section here is titled -- is
4 page LL-6, Laguna Lakes, and appears to be -- it's got
5 the logo on here and it's got a bunch of prices for
6 different models.

7 A Uh-huh.

8 Q And then at the bottom it says Transeastern
9 Homes.

10 A Okay.

11 Q As far as you know, this would have been
12 something also prepared by Transeastern for the sale and
13 development of Laguna Lakes properties back when they
14 were selling them?

15 A I would guess.

16 Q It says effective September 22nd, 2003, so
17 that would have been the date when this list was
18 effective, right?

19 A I would imagine.

20 Q Okay. And this address, 9201 Gladiolus
21 Drive, Fort Myers, Florida, do you know who -- what
22 address that's for?

23 A I believe that was the office set up across
24 the street from Laguna Lakes that they were utilizing.

25 Q Okay. That's not the address for the master

1 association, correct?

2 A Correct.

3 Q And www.LagunaLakes.com, that was the
4 website being used by Transeastern Homes?

5 A I -- I would imagine, yes.

6 Q And the next page LL-7, I know that the copy
7 is a little dark. This is how I got it from your --
8 from your attorneys. It looks like -- I don't know if
9 it's a card or an advertisement of some sort for Laguna
10 Lakes, but it's got the name and the logo here, correct?

11 A I'm actually looking and trying to --

12 Q And --

13 MR. ANNUNZIATA: Which page?

14 THE WITNESS: Yeah, I --

15 MR. BEHREN: Is he still okay, or --

16 THE WITNESS: I'm on the right page -- oh,
17 there it is. Okay. I was looking --

18 MR. ANNUNZIATA: LL-5?

19 THE WITNESS: Yeah, this is --

20 MR. BEHREN: I think there is a way, too,
21 where you can get rid on of the dropbox menu on
22 the side so you can look at the pictures
23 without -- here, you want me to --

24 THE WITNESS: Well, you know what it is, is
25 once it -- once -- once you pick it up and spin

1 it, it actually --

2 MR. BEHREN: Okay. It goes back to the side
3 there.

4 THE WITNESS: It goes back -- yeah, there we
5 go. So, yeah.

6 MR. ANNUNZIATA: That's 7. He's looking at
7 L-7. Is that what you are talking about?

8 MR. BEHREN: LL-7.

9 THE WITNESS: Right.

10 BY MR. BEHREN:

11 Q Okay. So, once again, this would have been
12 something -- it says Transeastern Homes.com on the top,
13 so this is also material produced to sell and market
14 Laguna Lakes by Transeastern Homes, as far as you
15 understand?

16 A Yes.

17 Q This was not generated by the master
18 association of Laguna Lakes, as far as you know?

19 A As far as I know.

20 Q And then on the next page it says
21 something -- Transeastern's most successful community,
22 your luxury lifestyle. It's really dark, I can't really
23 read it, but it looks like there might be a logo for
24 Laguna Lakes on the bottom of that. That's also
25 something that, as far as you know, the association

1 didn't generate?

2 A To my knowledge, I would imagine that you
3 would be correct.

4 Q Okay. Going to the next page, LL-9, this
5 looks like it's just another -- this would be just
6 another picture of the front -- home page of the
7 website?

8 A Correct.

9 Q Which we already talked about.

10 LL-10 is another -- looks like another
11 document here. It says final call, grand closeout,
12 TranseasternHome.com, and then at the bottom it has
13 Laguna Lakes and the logo.

14 And on the top it looks like it says -- it
15 says The News -- News-Press, perhaps, Sunday, January
16 two thousand and -- can't read the date, but it looks
17 like maybe --

18 A Two thousand --

19 Q -- 2005.

20 A January 9 of '05.

21 Q Okay. This, again -- would this have been
22 something that the master association created, or
23 something that, as far as you know, Transeastern created
24 to sell its homes?

25 A I would say it would be Transeastern.

1 Q This next document, LL-11, is -- it says
2 Robert -- you haven't -- you don't know anything about
3 this, I assume, Hajicek, this a check to him?

4 A Okay.

5 Q Do you know anything about that at all?

6 MR. MARINO: It's a discount coupon that --

7 THE WITNESS: No. Hmm. No.

8 MR. BEHREN: Okay.

9 BY MR. BEHREN:

10 Q LL-12, do you recognize this letter at all,
11 January 30th, 2004, re, Sprint phone service, dear
12 Laguna Lakes resident?

13 A Do I remember it?

14 Q Do you recognize that?

15 A I -- I --

16 Q Did you get that letter, or you don't know?

17 A I don't remember. I was living there by
18 that time, so I probably did get it, but I don't recall
19 one way --

20 Q Who is Kevin Jarrett, do you remember him,
21 sales manager?

22 A I remember the name, I don't really remember
23 him.

24 Q There was -- well, let me ask you this: As
25 far as you know --

1 A Uh-huh.

2 Q -- was he an employee of -- as far as you
3 know, was he an employee of Laguna Lakes master
4 association?

5 MR. HARDERS: Objection. Harders.

6 BY MR. BEHREN:

7 Q Let me rephrase the question.

8 As far as you know, was Kevin Jarrett an
9 employee of Laguna Lakes Community Association, Inc.?

10 MR. HARDERS: Same objection. Harders.

11 MR. BEHREN: You can answer, to the extent
12 that you know.

13 MR. HARDERS: You can answer.

14 THE WITNESS: I don't believe he was for the
15 master, correct, you're asking?

16 MR. BEHREN: Correct.

17 THE WITNESS: Right. I don't believe he
18 was --

19 BY MR. BEHREN:

20 Q Do you know who he was an employee of?

21 A I don't know. I -- I don't know if he was
22 for Transeastern or someone else, to tell you the truth.

23 Q And on the bottom of this document also, it
24 has Transeastern Homes logo, as well as -- at the top it
25 has Laguna Lakes logo, right?

1 A Correct.

2 Q On the bottom it has Transeastern Homes
3 logo?

4 A Correct.

5 Q It has an address of 9139 Spring Mountain
6 Way, Fort Myers. Do you know where that is?

7 A Yes, I do.

8 Q Where is that?

9 A That is in the Monterey parcel of Laguna
10 Lakes.

11 Q Okay. So, was that a --

12 A Home.

13 Q I'm sorry? It was like a model home there?

14 A Correct.

15 Q Okay. Was that owned by a parcel, or by
16 Laguna Lakes Community Association, or by Transeastern
17 Homes, if you know?

18 A I -- I specifically do not know, but I --

19 Q All right.

20 A -- would have imagine that it was
21 Transeastern.

22 Q Okay. And then the next page here, LL-13, I
23 guess at the top it says Transeastern Homes, built with
24 pride, welcome to Laguna Lakes. It has that same
25 address on the bottom.

1 Do you recognize this page at all? I mean,
2 is this something that you received, or --

3 A I believe I did receive this. I'm not
4 exactly -- I -- full remembrance.

5 Q All right. This next document here, LL-17,
6 this is a letter to you in Toms River from Laguna Lakes,
7 correct?

8 A Hang on a second.

9 Q It's LL-17.

10 A Yeah, yes.

11 Q And you provided this to counsel, I guess,
12 to produce in this case?

13 A Yes.

14 Q And it has here, I guess, also Laguna Lakes
15 logo. And it was from Transeastern Homes to you,
16 correct?

17 A Correct.

18 Q And it has 9209 Arragon Avenue. Do you know
19 where that was?

20 A 9209 Calle Arragon Avenue.

21 Q Sorry, Calle Arragon Avenue.

22 A That is the Pebble Beach condo unit at the
23 very front, main entranceway.

24 Q Okay. So, that was like -- was that a model
25 home of some sort also?

1 A Yes.

2 Q Okay. And then that also was --

3 LagunaLakes.com, it has on here as the webpage, right?

4 A I would imagine -- yes, it does.

5 Q This is something you got from Transeastern,
6 correct --

7 A Yeah.

8 Q -- not from the master association?

9 A That's correct.

10 Q And then just going on to LL-20, it says
11 prospectus for Pebble Beach at Laguna Lakes, a
12 condominium?

13 A Uh-huh.

14 Q This would have been the prospectus you
15 received when you were buying a Pebble Beach
16 condominium?

17 A That's correct.

18 Q So, does this document contain then both the
19 master association documents as well as the Pebble Beach
20 parcel association documents?

21 A Yes, it does.

22 Q And looking at LL-36, you got that, Articles
23 of Incorporation?

24 A Yes.

25 Q Do you recognize that?

1 A Yes.

2 Q That's the Articles of Incorporation for
3 Laguna Lakes Community Association?

4 A Yes.

5 Q Okay. And you would agree that under
6 Article 2 purpose, it says that the job of the community
7 association is to enforce and exercise the duties of the
8 community association as provided in the declaration,
9 right?

10 A Yes.

11 MR. ROTHSCHILD: Object. Chad.

12 MR. BEHREN: Okay.

13 BY MR. BEHREN:

14 Q It also says under 2.2.1, that is to promote
15 the health, safety, welfare, comfort and social and
16 economic welfare of the members and the owners and
17 residents of the subject property as authorized by the
18 declaration, by these articles and by the bylaws,
19 correct?

20 MR. ROTHSCHILD: Object. Chad.

21 BY MR. BEHREN:

22 Q That's what it says, sir?

23 MR. ROTHSCHILD: You can answer.

24 THE WITNESS: That's what it says, yes.

25

1 BY MR. BEHREN:

2 Q Okay. Are you aware anywhere in the
3 declaration where it says that -- the master declaration
4 for Laguna Lakes, that one of the jobs of the Laguna
5 Lakes is to register trademarks, logos and intellectual
6 property?

7 MR. ROTHSCILD: Object. Chad.

8 You can answer.

9 THE WITNESS: I believe that in the --
10 promote of health, safety, welfare, welfare being
11 the key word, the social and economic, economic
12 welfare being the keywords, that it is our
13 fiduciary duty to protect all assets of Laguna
14 Lakes Community Association, and their name and
15 logo would be definitely part of that.

16 BY MR. BEHREN:

17 Q Okay. And is it your contention that
18 Mr. Marino's use of the name and logo is harming the
19 association?

20 A It has the potential to do harm, yes.

21 Q But the question is, as far as you know, has
22 Mr. Marino's use of the name or logo harmed the
23 association?

24 A To my knowledge, it hasn't harmed.

25 Q Has anybody, to you, expressed any

1 confusion, as far as you know, between Mr. Marino and
2 the Laguna Lakes Community Association?

3 A Has anyone expressed the confusion?

4 Q Yeah.

5 A I have had different people express the --
6 their concerns to me, yes, residents.

7 Q Different people expressed their concerns?

8 A Yes.

9 Q Who has expressed their concerns, and what
10 did they tell you?

11 A Different residents over the years have
12 mentioned it to me and, you know --

13 Q Different residents have expressed their
14 concerns. Who were the residents, do you recall?

15 A I don't really recall. There's, you know
16 specific -- other than the board members, once we
17 actually started talking about it, I don't really
18 remember different names.

19 Q What were the concerns that were expressed
20 to you?

21 A It started out as, does this Realtor work
22 for the community association? My reply is no. And
23 their reply was, it certainly seems that way.

24 Q Okay. Based upon what?

25 A Basically that he's using the name Laguna

1 Lakes, he's using the logo of Laguna Lakes, he calls
2 himself Mr. Laguna Lakes. When you combine the three of
3 them on signage or advertising of any type, it
4 definitely comes across as he is representing himself
5 for the community, of the community.

6 Q Has he ever -- as far as you know, has
7 Mr. Marino ever relayed that he is a representative or
8 employee or a contractor of the Laguna Lakes Community
9 Association?

10 A I -- never to me, no.

11 Q You're not aware of anybody telling you that
12 either, are you?

13 A I can't -- I don't recall, no.

14 Q Aren't there other Realtors even today who
15 are currently using the Laguna Lakes name and logo in
16 their sales materials?

17 A No. Not to my knowledge, no. Others have
18 used it in the past, yes.

19 Q Such as who?

20 A I don't recall their names.

21 Q Have you all complained to the other
22 Realtors about the use of the name or the logo?

23 A Yes, we did.

24 Q Okay. And what was the response?

25 A They stopped.

1 Q Did you use lawyers to send them like some
2 type of cease and desist letter?

3 A We tried to do it verbally first, and that
4 was effective.

5 Q And you don't remember who these Realtors
6 were?

7 A Off the top of my head, no. There were many
8 different Realtors in Laguna.

9 Q And, like I said, there are still some today
10 who are still using the name and the logo, too, correct?

11 A Not to my knowledge. I haven't seen anyone.

12 Q Okay. And you would agree also, though, in
13 the Articles of Incorporation and the master
14 declaration, there is nothing that references the
15 ability to maintain goodwill or intellectual property of
16 the association, correct?

17 MR. HARDERS: Objection. Harders.

18 Go ahead and answer, Patrick.

19 THE WITNESS: What was that now?

20 BY MR. BEHREN:

21 Q There's nothing specifically in the Articles
22 of Incorporation or the master declaration that set
23 forth that one of the duties of the master association
24 is to maintain or inventory intellectual property,
25 correct?

1 A Not individual property, no.

2 Q There is nothing that says anything about
3 intellectual property either, correct?

4 A I don't believe so.

5 Q There isn't even anything in any of these --
6 the master declaration or the Articles of Incorporation
7 indicating that Laguna Lakes Community Association is
8 the owner of the name or the logo, correct?

9 MR. ROTHCHILD: Object. Chad.

10 MR. HARDERS: Go ahead and answer, Patrick,
11 if you know.

12 THE WITNESS: I don't believe that there is
13 anything in the articles or declaration.

14 BY MR. BEHREN:

15 Q And you would agree also that -- when you
16 said you're trying to protect the economic well being of
17 the community, isn't it in the economic well being of
18 the community to have Realtors selling units in Laguna
19 Lakes for the highest possible prices that the market
20 will bear?

21 A Absolutely.

22 Q As far as you know, isn't that something
23 that Mr. Marino is doing?

24 A As far as I know, I would say that that
25 would be possible. I don't know -- I don't know the

1 financials. I don't look at -- I have -- I don't see
2 what he is and is not doing.

3 When I get stuff that comes across, as far
4 as what has sold and who -- you know, as far as
5 paperwork, it definitely comes across to the master
6 board and the estoppel. I don't really look at who's
7 selling it, or I -- I look at bottom line, who's --
8 who's buying, are there -- is the home up to date on
9 fees, and that's really what my main focus is. I don't
10 look at price, I don't look at --

11 Q Let me move you along to document LL-165.

12 A Oh, almost.

13 Q It's towards the end.

14 A Yeah, I know.

15 Okay, yeah.

16 Q And what -- do you recognize this document
17 here, LL-165?

18 A Yes, I do.

19 Q What is that?

20 A That is a mailer from Mr. Marino.

21 Q Okay. Is that -- was that sent to you?

22 A It was sent to, I believe, every resident in
23 Laguna Lakes.

24 Q Okay. But, I'm just -- I mean -- so, did
25 you get one of these? Is this yours here that was

1 produced to the attorneys, as far as you know, or you're
2 not sure?

3 A It very well may be. I'm -- I -- I -- that
4 part of it, I can't -- I don't remember if I gave one or
5 not.

6 Q Looking at LL-166 -- by the way, 165, too,
7 under Mr. Marino's name and Mr. Laguna Lakes, it says
8 Amerivest Realty, correct?

9 A Yes.

10 Q And also LL-165 is a -- you said is another
11 mailer that was sent out by Mr. Marino, as far as you
12 know?

13 UNIDENTIFIED SPEAKER: Object. He can
14 answer.

15 THE WITNESS: One six five?

16 BY MR. BEHREN:

17 Q LL -- I'm sorry, LL-166. Pardon me.

18 A I don't really recognize this one, but it
19 could be.

20 Q Okay. Once again, though, too, it works --
21 Mr. Laguna Lakes, it refers to him as somebody for --
22 who works, I guess, through Amerivest Realty, correct?

23 A Yes.

24 Q And that's on the return address also here
25 on the -- on the right-hand side of this postcard,

1 correct?

2 A Yes.

3 Q And he's got the web address listed here of
4 www.MrLagunaLakes.com, right?

5 A Correct.

6 Q Have you been on that site before?

7 A No.

8 Q Have you been on the website LagunaLakes.com
9 before?

10 A No, I have not.

11 Q You're not a big Internet guy, huh?

12 No?

13 A No. I -- I go on the Internet a lot, but
14 I --

15 Q But just not looking at these types of
16 things?

17 A No.

18 Q How about LL-167, do you recognize that
19 document?

20 A I -- I have seen many of these, so whether
21 it's this specific one or not -- but, yes, I have seen
22 something just like this repeatedly, yes.

23 Q Okay. And LL-168 also?

24 A Yes.

25 Q This next document, LL-169, it's an MLS

1 listing. Any idea why this was produced to us by your
2 attorneys?

3 MR. ANNUNZIATA: Object to form.

4 MR. BEHREN: Well, I -- let me make
5 something clear.

6 One of you guys is going to have to choose
7 who is defending the deposition, and one of you
8 guys can make the objections. I'm not going to
9 have Harder and the other guy and you. I'm not
10 going to get triple-teamed here. So, one person
11 needs to say who is the person that's defending
12 this depo, and then that's the one who I would
13 expect to make objections and deal with me, not
14 three of you.

15 So, who's -- who's stepping up to that role
16 right now?

17 UNIDENTIFIED SPEAKER: Harders will be the
18 primary one, but I need my cocounsel there with
19 you in the office to be able to object.

20 MR. BEHREN: I'm not going to let him object
21 to questions. I mean, you know, if he wants to
22 sit here -- obviously, he's -- you know, he's
23 sitting here and he's --

24 MR. ANNUNZIATA: I just objected to form.

25 MR. BEHREN: No, I understand that, but

1 there shouldn't be multiple attorneys objecting to
2 the questions. I mean, there should be one.

3 UNIDENTIFIED SPEAKER: Go ahead and answer,
4 Patrick.

5 THE COURT REPORTER: Who was that?

6 THE WITNESS: I'm looking at this. I -- I
7 really don't know why that they would have put
8 that in.

9 BY MR. BEHREN:

10 Q Okay. I mean, I don't see Mr. Marino
11 referenced anywhere in here, correct? It looks like
12 there is an Adriana Fernandez, who I guess has this
13 particular listing. Do you know her?

14 A No, I do not.

15 Q And this next page, LL-170 --

16 A Okay.

17 Q -- do you know what this is here?

18 A It's a floor plan.

19 Q Okay. Any idea why this is in this packet
20 of materials that was produced to me?

21 A Because it would be a floor plan for one of
22 the models maybe.

23 Q Do you know who actually prepared this floor
24 plan? Was this prepared by Transeastern, or the master
25 association, or Mr. Marino, or do you know?

1 A I don't know, but it says copyright 2006,
2 Gerard Marino.

3 Q Okay. And as far as you know, has the
4 master association ever prepared floor plans for units
5 contained in various parcels?

6 A No, but I know that the master board had
7 already taken over all of Laguna Lakes by that time.

8 Q Well, they took over the common areas of
9 Laguna Lakes by that time, correct?

10 A 2006, correct.

11 Q By the way, who did they take -- do you know
12 who it was that Laguna Lakes took over the -- do you
13 know who it was that the Laguna Lakes Community
14 Association, Inc. took over the common areas from in
15 2006?

16 A I believe it was Transeastern Homes.

17 Q Okay. Well, if you look at LL-97, it should
18 be the quitclaim deed dated December 2nd, 2003.

19 A Okay.

20 Q It indicates apparently that you were
21 deed -- quitclaimed property -- Laguna Lakes Community
22 Association was quitclaimed property from Transeastern
23 Laguna Lakes, LLC, correct?

24 A Okay, yes.

25 Q Any idea whether Transeastern Laguna Lakes,

1 LLC was the same as Transeastern Homes?

2 A I actually never noticed Transeastern Laguna
3 Lakes, LLC, so -- but I would imagine it was
4 Transeastern. That's the best I could tell you.

5 Q So, you don't know if there's a -- if there
6 was a distinction between the Transeastern Laguna Lakes,
7 LLC entity and Transeastern Homes, LLC -- I mean
8 Transeastern Homes entity, do you?

9 A No.

10 Q And under this quitclaim deed also, it says
11 the property that was conveyed hereby is intended to be
12 common area pursuant to the master declaration for
13 Laguna Lakes, right?

14 A Yes.

15 Q Does the master declaration for Laguna Lakes
16 define what the common area is?

17 A Yes.

18 Q Okay. So, you would agree that under this
19 quitclaim deed, Transeastern Laguna Lakes, LLC was
20 giving -- or turning over to Laguna Lakes Community
21 Association, Inc. the common area as defined in the
22 master declaration for Laguna Lakes, correct?

23 A Correct.

24 Q Now, with regard to Exhibit -- going back to
25 Exhibit A here -- and I will take that back from you. I

1 am done with the production that they gave me.

2 A Okay.

3 UNIDENTIFIED SPEAKER: If this would be a
4 convenient time, or if -- if soon, I don't want to
5 interrupt you here, but if we could just take a
6 five - or a ten-minute break to refill the water
7 glasses?

8 MR. BEHREN: That's fine, okay.

9 UNIDENTIFIED SPEAKER: At a convenient time.

10 MR. BEHREN: That's fine. I'm at a breaking
11 point, so that's fine.

12 MR. ANNUNZIATA: It's noon. What are you
13 guys doing for lunch? Are you taking a quick
14 break, or are you going to --

15 MR. BEHREN: Well, I'd prefer to --

16 MR. ANNUNZIATA: Because he's here until
17 2:00, or till -- yeah, at least until 2:00.

18 MR. BEHREN: Well, then, I would prefer to
19 push forward right now rather than break.

20 UNIDENTIFIED SPEAKER: Yeah, we're happy
21 with that, too.

22 MR. ANNUNZIATA: All right.

23 UNIDENTIFIED SPEAKER: Talk to you in ten
24 minutes.

25 (A brief recess was taken.)

1 MR. BEHREN: All right. Going back on the
2 record.

3 BY MR. BEHREN:

4 Q Do you know when it was that Mr. Marino
5 first started using the Laguna Lakes name and logo?

6 A Specifically when, no.

7 Q Yeah, do you know when?

8 A No.

9 Q Okay. Would you agree that, as far as you
10 know, Mr -- Mr. -- they are washing clothes again over
11 there.

12 UNIDENTIFIED SPEAKER: I know now, it's
13 definitely when the AC kicks on, because I tried
14 to move the phone and it's right over the vent, so
15 we'll try to turn that off.

16 BY MR. BEHREN:

17 Q Do you -- again, so the question is, do you
18 know whether or not Mr. Marino was using the Laguna
19 Lakes name and logo when Transeastern was still selling
20 and marketing homes in Laguna Lakes?

21 A Was he using the name and logo?

22 Q Yeah.

23 A I don't know specifically. I do know that I
24 hadn't seen the logo as part of things until the last
25 few years.

1 Q Okay. So, but as far as you know, was
2 Mr. Marino selling units as Mr. Laguna Lakes while
3 Transeastern Homes was still marketing and selling
4 properties there?

5 A I do not know.

6 Q You would agree, though, that Mr. Marino has
7 been selling and marketing Laguna Lakes properties for a
8 long time, correct?

9 A A long time, yes.

10 Q Since you moved into the property, into the
11 development, as far as you know, has he been selling
12 Laguna Lakes properties?

13 A I -- I -- I really don't recall one way or
14 the other.

15 Q Have any of the association parcels
16 complained about Mr. Marino selling properties, to your
17 knowledge?

18 A Other than placing signs up and around, no.

19 Q By the way, if you are successful in
20 obtaining registration of this trademark, do you intend
21 to prohibit the parcel associations from using the name
22 and logo?

23 A I do not believe that they actually use the
24 logo for any commercial use, but as members of the
25 overall community, I would -- I would imagine that the

1 board, whoever that may be at that time, would have the
2 last say-so on that, yes.

3 Q So, you don't know at this time?

4 A I can't -- no, that's a -- that's a board
5 decision, that's not my decision.

6 Q Okay. And you testified before that it's
7 the -- your -- in the interest of the board to promote
8 the social welfare of the development, correct?

9 A That's correct.

10 Q So, you would agree that it would be in the
11 social welfare of the development for people who are
12 trying to sell units, to be able to sell them, right?

13 A Yes.

14 Q So, how is it that stopping Mr. Marino from
15 selling units in Laguna Lakes would promote the social
16 welfare of the development?

17 UNIDENTIFIED SPEAKER: Object.

18 MR. BEHREN: You can answer.

19 UNIDENTIFIED SPEAKER: Go ahead, Patrick, if
20 you know.

21 THE WITNESS: I don't believe we are trying
22 to get him to stop selling units, I believe that
23 what we are trying to stop is the idea of any
24 Realtor or other persons representing themselves
25 as if they are part of the association.

1 BY MR. BEHREN:

2 Q So, is it your contention that by him using
3 the name Mr. Laguna Lakes, that he is representing
4 himself as part of the association?

5 A No, it is not.

6 Q Are you attempting to keep him from using
7 the name Mr. Laguna Lakes?

8 A I don't believe that Mr. Laguna Lakes really
9 contended in this. I believe it was the name Laguna
10 Lakes with the logo combination that really presented
11 the biggest part of the problem.

12 Q Okay. So, as far as you know, you are not
13 attempting to prevent Mr. Marino from selling properties
14 in Laguna Lakes or using the Mr. Laguna Lakes name,
15 correct?

16 A Correct.

17 UNIDENTIFIED SPEAKER: Object. This is --
18 this is -- you brought this opposition to prevent
19 the association from registering its intellectual
20 properties.

21 MR. BEHREN: Can you -- can you please not
22 make speaking objections? I'm sure that that's
23 not prescribed or allowed by the TTAB rules. If
24 you have an objection and want to instruct the
25 witness not to answer, I guess that's your

1 prerogative, but please don't make speaking
2 objections.

3 UNIDENTIFIED SPEAKER: I mean, I'm trying to
4 get a point that this has nothing to do -- we have
5 given you a lot of latitude. We haven't even
6 touched on anything that he was noticed for.

7 MR. BEHREN: Can we, please -- again, you're
8 making speaking objections. Are you instructing
9 the witness not to answer or not?

10 UNIDENTIFIED SPEAKER: The point of what the
11 board is trying to do or will do is irrelevant to
12 anything in this case.

13 MR. BEHREN: I disagree, but go ahead.

14 Are you instructing the witness not to
15 answer or not?

16 UNIDENTIFIED SPEAKER: No. Go ahead and
17 answer, Patrick, if you know what a future board
18 is going to do.

19 THE WITNESS: Could you repeat the question?

20 MR. BEHREN: Right.

21 BY MR. BEHREN:

22 Q So, again, it's -- as far as you know, it's
23 not the board's intention to prevent Mr. Marino from
24 selling properties or from using the name Mr. Laguna
25 Lakes, correct?

1 A This board would -- would agree with that,
2 yes.

3 Q Okay.

4 A Following boards, I can't --

5 Q I understand.

6 So, as far as you know, it's the -- it was
7 the board's attempt -- or the board's intent is to have
8 Mr. Marino stop using the logo on his materials? Is
9 that what the issue is?

10 A The name LagunaLakes.com, with the
11 accompaniment of the logo, presents a problem.

12 Q Why didn't -- if you all were so concerned
13 about LagunaLakes.com, why all didn't you purchase that
14 domain name?

15 A Well, first of all, we -- we already had
16 Laguna Lakes Community Association name, so we didn't
17 need to go any further than that.

18 Second of all, we never actually had a
19 problem until all of a sudden the combination of things
20 started to show up, and -- and, in other words, when you
21 saw Mr. -- not Mr. Laguna Lakes, but when you saw
22 LagunaLakes.com and a logo in an advertisement going
23 out, it clearly represents itself as being part of this
24 association. Whether it says something on there of
25 Amerest (phonetic spelling) or not, it still clearly

1 represents itself as an association.

2 Q Okay. So, approximately when was it that
3 then you all decided that Mr. Marino's combination, I
4 guess, of various things was problematic for the
5 association?

6 A The exact date of when we started to discuss
7 it, it was in -- what was it? Was it April or -- April
8 or May of 2011. Again, this was a new sitting board.
9 Our first meeting was the end of February.

10 Q So, was -- is it -- would it be a fair
11 statement that the sole intent behind seeking trademark
12 registration of the name and logo was to proscribe
13 Mr. Marino from using it in his advertising?

14 UNIDENTIFIED SPEAKER: Object.

15 Go ahead, Patrick, if you -- if you know the
16 answer.

17 THE WITNESS: It was not just Mr. Marino, it
18 was other -- any -- any outside business, person,
19 whatever, using the name Laguna Lakes, in
20 combination with the logo, to that board
21 represented itself as the board association, that
22 was what we felt.

23 MR. MARINO: Which one are you looking for?

24 (Off-the-record discussion.)

25

1 (Deposition Exhibit C was marked for
2 identification.)

3 BY MR. BEHREN:

4 Q Let me show you exhibit, what I am going to
5 mark as Exhibit C.

6 Do you all have a problem with Re/Max, for
7 instance, maintaining a site called
8 LagunaLakesHomeReport.com?

9 A Yes.

10 Q Have you seen that?

11 A I believe -- I think we --

12 MR. ANNUNZIATA: Which -- is this in the
13 book at all?

14 MR. MARINO: Uh-huh.

15 MR. ANNUNZIATA: And you're looking at
16 Exhibit C, which is, what, you know -- guys, you
17 see what he's talking about?

18 MR. BEHREN: A Re/Max postcard.

19 UNIDENTIFIED SPEAKER: Is there a new
20 document that we are looking at now?

21 THE WITNESS: Yes.

22 MR. ANNUNZIATA: Yeah. He has presented a
23 document. It's on a green -- you don't see a
24 green tab. It's hard to really say what page.
25 It's a --

1 MR. MARINO: You don't have --

2 MR. BEHREN: Yeah, okay, that's why --

3 (Off-the-record discussion.)

4 MR. BEHREN: Yeah, everybody's got to stop
5 talking at once here.

6 MR. ANNUNZIATA: It's halfway through the
7 stack of papers.

8 UNIDENTIFIED SPEAKER: How many pages were
9 in the fax?

10 MR. ANNUNZIATA: Hold on.

11 UNIDENTIFIED SPEAKER: Did you guys drop
12 off? I can't even --

13 MR. ANNUNZIATA: No, we're here. I'm
14 counting, I'm counting.

15 UNIDENTIFIED SPEAKER: Doesn't it have a
16 header, like a page --

17 MR. ANNUNZIATA: No. It has -- no, there is
18 no page number on it.

19 Go halfway through and you will see a --
20 with what you got, all you see are black and white
21 copies, so you need to go -- it's just best if I
22 count the pages.

23 UNIDENTIFIED SPEAKER: I'm guess what I'm
24 trying to figure out is which stack of the four
25 that it might be in.

1 MR. ANNUNZIATA: I have no way of telling
2 you that.

3 (Off-the-record discussion.)

4 BY MR. BEHREN:

5 Q Exhibit C --

6 A Yes.

7 Q -- right, is a postcard from Re/Max, from a
8 Realtor here, that's using LagunaLakesHomeReport.com,
9 correct?

10 A Correct.

11 Q Has anybody on the board contacted them to
12 advise them to not use Laguna Lakes in their sale of
13 Laguna Lakes properties?

14 A He was approached by the CAM.

15 Q He was approached by who?

16 A The CAM.

17 Q The CAM?

18 A Community manager.

19 Q Who is the community manager?

20 A He -- he's Patrick -- his name is Patrick
21 Maguire.

22 Q All right.

23 A He works for our property.

24 Q So, he works for Alliance, or whatever,
25 Alliant?

1 A Yes.

2 Q For how long?

3 A I believe it was three years.

4 Q Is he still currently working for Alliant?

5 A No. He left about a month and a half ago.

6 Q Okay. So, you're saying he communicated
7 with this Re/Max person?

8 A To my knowledge, yes.

9 Q Is that site still up?

10 A I -- I never went and looked, so I couldn't
11 tell you.

12 (Deposition Exhibit D was marked for
13 identification.)

14 BY MR. BEHREN:

15 Q How about Exhibit D? It says Keller
16 Williams, somebody by the name of Kris Asquith. Do you
17 know her?

18 A I don't know her, no.

19 Q Do you know whether or not she maintains a
20 site called LagunaLakesRealEstateListings.com?

21 A I do not know that.

22 Q Did any of --

23 A I do --

24 Q Go ahead.

25 A I do recognize this. And I know that she

1 was asked to take it down, again by Patrick Maguire --

2 Q Do you know, did she --

3 A -- to stop advertise --

4 Q -- take it --

5 A I don't know. I don't -- I -- you know.

6 Q What's problematic with that? Do you
7 believe that somehow she's indicating that she's
8 affiliated with the association?

9 A Well, to -- to a certain degree, there were
10 other things that she had put out, and that's where the
11 problems started.

12 Q Such as what?

13 A Again, there -- at one point she was using
14 the signage with the logo with inside -- with the whole
15 name and the neighborhood of Laguna Lakes, and we
16 thought that that was problematic, as a representation
17 of the board somehow, and we asked her to stop. She
18 could change things around, but not to be using things
19 in any way to represent herself as these -- as part of
20 the association in any way.

21 Q What about the Re/Max person, did he do
22 something problematic also other than use Laguna Lakes
23 Report -- excuse me, LagunaLakesHomeReport.com?

24 A I believe this particular one was -- had a
25 different signage at one point also. I'm trying to

1 remember specifics, and I -- I'm drawing a blank.

2 I know that there were three people on the
3 radar and -- that were doing these things, as far as
4 Realtors go. There was other people that were using it,
5 they were also sent cease and desists, so --

6 Q Hold on a second.

7 So, you're saying the three Realtors on
8 the -- that you all were having an issue with was what,
9 Mr. Marino, Ms. Asquith, and then --

10 A Well, the names of the other two, I -- I
11 really don't know, because I don't even know them. I
12 did know Mr. Marino, so his name is more apt to stay
13 within my memory of everything.

14 (Deposition Exhibit E was marked for
15 identification.)

16 BY MR. BEHREN:

17 Q How about Exhibit E here, where there were
18 signs from a Jason Schroeder of Novelli, I-N-T,
19 advertising Laguna Lakes properties --

20 MR. ANNUNZIATA: Okay. Hang on a second.

21 You're --

22 BY MR. BEHREN:

23 Q -- do you have any issues with that guy?

24 MR. ANNUNZIATA: You're showing him
25 documents and you've marked them D and E. Have

1 you guys -- are you guys following the exhibits?

2 UNIDENTIFIED SPEAKER: No.

3 UNIDENTIFIED SPEAKER: I was going to ask,
4 do you have these documents?

5 MR. BEHREN: They are all in the stuff
6 that -- they were faxed.

7 (Off-the-record discussion.)

8 MR. ANNUNZIATA: It's the next two pages,
9 guys, from the yellow -- from the -- from the --

10 THE WITNESS: Postcard.

11 MR. ANNUNZIATA: -- from the postcard. It's
12 the very next one and the very next one. So, the
13 very next one is marked as Exhibit E, and the one
14 after that is marked as Exhibit D.

15 UNIDENTIFIED SPEAKER: What are they saying?
16 What's E saying?

17 MR. ANNUNZIATA: E is just a note from -- or
18 a picture of a -- of a -- of a sign from Jason
19 Schroeder at Novelli, I-N-T. Whether it's Novelli
20 International -- but it looks like it's a sign.
21 It says Laguna Lakes, five bed, slash, three-car
22 garage. It's just a sign.

23 UNIDENTIFIED SPEAKER: Because I think the
24 order -- you know, they might not -- they might
25 have gotten mixed up in the order of the fax.

1 UNIDENTIFIED SPEAKER: Okay, Jason Schroeder
2 we got, E. What's F?

3 MR. ANNUNZIATA: No, no, that -- that's E.
4 And then if you go before that, D is the very
5 next --

6 UNIDENTIFIED SPEAKER: D?

7 MR. ANNUNZIATA: -- is the Kris Asquith --

8 UNIDENTIFIED SPEAKER: We have got that one.

9 UNIDENTIFIED SPEAKER: We have got that one.

10 MR. ANNUNZIATA: Okay. So, that's D. Then
11 E is Jason Schroeder.

12 UNIDENTIFIED SPEAKER: We have got that.

13 MR. ANNUNZIATA: Go ahead.

14 MR. BEHREN: All right.

15 MR. ANNUNZIATA: And if we could take it a
16 little slower -- I understand you got to move
17 forward, if you could just take it and just let
18 them know what you're doing so they can follow,
19 too, please.

20 BY MR. BEHREN:

21 Q All right. So, now, other than -- you just
22 talked about Realtors. What other persons or parties
23 out there were there issues with, with regard to use of,
24 I guess, the name or logo of Laguna Lakes?

25 A I don't believe that this gentleman was

1 referred to as -- or talked to as far as a problematic
2 person -- or set-up of Laguna Lakes with the -- with the
3 logo. It didn't really necessarily came across as he
4 was representing himself as there. However, he was
5 spoken to about the signage and putting the signs on the
6 property were not acceptable.

7 Q Okay. Well, moving on, then, you said there
8 were other people other than Realtors who there were
9 issues with?

10 A Yes.

11 Q Who are we -- what are we referring to?

12 A We had a resident that was out trying to
13 get -- drum up donations under the name of Laguna Lakes,
14 and she was sent a cease and desist letter immediate.

15 Q Okay. What kind of donations?

16 A I -- I'm not exactly sure, but she clearly
17 represented herself as a -- I don't know what the
18 donations were for. I know that she was operating
19 Angels of Laguna and some other club along that lines.
20 We had no problem with the clubs, but what we did have a
21 problem with was you go out and represent yourself as
22 part of the association, collecting things, is totally
23 different than you're just a club, looking --

24 Q Did she -- did she use the logo?

25 A I --

1 UNIDENTIFIED SPEAKER: (Unintelligible.)

2 THE COURT REPORTER: I'm sorry?

3 MR. BEHREN: Who just spoke?

4 THE COURT REPORTER: Who just spoke? And I
5 didn't hear what you said.

6 MR. ROTHSCHILD: It was just something that
7 was blurted out up here. It was Chad Rothschild.
8 And I won't repeat it, so it doesn't get in,
9 unless you would like me to, Mr. Behren.

10 MR. BEHREN: Like I said, I'm trying to --

11 MR. ROTHSCHILD: I understand.

12 MR. BEHREN: -- maintain one attorney
13 defending this deposition.

14 THE WITNESS: Okay. I -- I'm trying to
15 remember if there was a logo or not. We had a
16 business contact us, the board, and told us about
17 that.

18 BY MR. BEHREN:

19 Q The donations?

20 A That there were people out there clear --
21 you know, representing themselves as the association.

22 Q Are there other clubs and businesses
23 surrounding Laguna Lakes that refer to themselves as
24 Laguna -- like Laguna Cleaners, Laguna Pizza, or
25 anything of that nature, that you're aware of?

1 A I -- not that I'm aware of. This was a
2 resident that lived inside Laguna that started a little
3 club of women, of -- in Laguna. It had nothing to do
4 with -- it wasn't an official club, it was nothing
5 official about it.

6 Q So, were there multi -- so, she had a club
7 actually that was referred to something like Angels of
8 Laguna? Were there -- are there other clubs that are
9 within Laguna that refer to Laguna also?

10 A I don't believe there are any clubs any
11 longer.

12 Q Okay. And so I guess one of the things
13 you're applying -- you contend that Laguna Lakes
14 Community Association, Inc. owns this particular logo
15 that you applied for registration of?

16 A That's correct.

17 Q Okay. Based upon what? Who -- who -- where
18 did you get it from?

19 A Transeastern.

20 Q Who?

21 A What do you mean who?

22 Q Transeastern -- what Transeastern entity
23 gave it to you?

24 A It is our contention that at the turnover,
25 when we took over ownership, everything was quit-deeded

1 over to us and whatnot, that the sign clearly with the
2 logo and the name were on there. All the signage around
3 Laguna Lakes has the name and the logo present. Even
4 when it goes into a parcel, it says Pebble Beach,
5 Monterey, whichever one. And if it does have the logo,
6 it would have the logo with Laguna Lakes underneath
7 it --

8 Q Okay.

9 A -- to differentiate itself from --

10 Q So, it's your contention that you all have
11 inherited the logo by virtue of the quitclaim deed we
12 just went through before?

13 A That's absolutely correct.

14 Q Okay. But you don't know whether or not
15 Transeastern Laguna Lakes, LLC even owned that logo to
16 give you, do you?

17 A I couldn't tell you that they own it, no.

18 Q Okay. And as far as I could see, that
19 quitclaim deed only referred to real estate being
20 conveyed --

21 A Okay.

22 Q -- correct, and common areas, right?

23 A Right, yes.

24 Q And where -- did it reference somewhere in
25 that quitclaim deed that you were being transferred

1 ownership of --

2 A Well --

3 Q -- intellectual property rights and logos
4 and things of that nature?

5 A Okay. Well, you -- like you said, it was
6 the common areas, correct? The front entryway would be
7 a common area that the association is clearly
8 responsible for, and those signs are on both sides, with
9 the name and the log splashed.

10 When you go up to the clubhouse, again
11 common area, there was a sign right at the front door
12 with the name and the logo.

13 Q Okay. But, again, as far as you know, there
14 is no documentation from any Transeastern entity to
15 Laguna Lakes Community Association, Inc. giving them the
16 intellectual property, such as logos and things of that
17 nature, correct?

18 A I -- I -- I'm not sure of that, no. I don't
19 know.

20 Q You would agree also that even -- when did
21 the association -- when was the -- when did the Laguna
22 Lakes Community Association, Inc. take over the
23 association from Transeastern Laguna Lakes, LLC?

24 A The association -- let me -- can you repeat
25 that --

1 Q Sure.

2 A -- because I --

3 Q When did the Laguna Lakes Community
4 Association, Inc. take over the association from Laguna
5 Lakes -- excuse me, from Transeastern Laguna Lakes, LLC?

6 A The turnover?

7 Q Yes.

8 A The turnover was January of '06.

9 Q Okay. Was Transeastern still selling new
10 homes in the development at that point in time?

11 A I think there were still a few left.

12 Q Was Transeastern still using the logo to
13 sell those homes in their various promotional and
14 marketing materials?

15 A I believe they were.

16 Q Looking at Exhibit A, which is the Re-Notice
17 of Taking Depositions --

18 A Okay.

19 Q And, again, you were designated as the
20 corporate rep with the most knowledge of the various
21 issues set forth on attached Exhibit A. And one of the
22 issues was the first use of the marks applied for with
23 the USPTO.

24 When was it that you believe Laguna Lakes
25 Community Association, Inc. first started using the

1 Laguna Lakes stylized name and logo that you have
2 applied for trademarks on?

3 A When is the first time? To my knowledge, it
4 would be September of '03, when they started to put --
5 when they got things together for the county --

6 Q When --

7 A -- when they applied.

8 Q When who applied? I -- we got to clarify
9 that.

10 A Transeastern applied to do, I guess, the
11 community itself or whatnot, and they actually formed
12 Laguna Lakes Association.

13 Q Okay. So --

14 A I believe it was two -- I believe it was
15 September of '03.

16 Q Okay. So, you're saying September of '03,
17 the Articles of Incorporation were filed for Laguna
18 Lakes Community Association, Inc., correct?

19 A Correct.

20 Q Was there anywhere at any -- at that point
21 in time, was the Laguna Lakes Community Association,
22 Inc. using the name or the logo, or was Transeastern
23 using the name or the logo?

24 A Transeastern was using it.

25 Q So, then, the question is when was it that

1 you contend that Laguna Lakes first started -- Community
2 Association, first started using the name and the logo?

3 A Well, I believe when they started
4 community -- when they actually started the community,
5 they actually started the association at the same time.
6 And they were on the board. There was no owners on the
7 board up until the turnover.

8 Q Okay. But that would have been -- as I
9 understand it, Laguna Lakes Community Association, Inc.
10 was originally owned by, I believe, Transeastern Laguna
11 Lakes, LLC, correct?

12 A Yes.

13 Q Okay. So -- and, again, so you don't even
14 know whether Transeastern Laguna Lakes, LLC was ever the
15 owner or user of any of the logos or stylized name of
16 Laguna Lakes, correct?

17 A I don't believe I know that. I have no --
18 no knowledge of them owning or not -- not owning, no.

19 Q Let me ask you this: Do you know who
20 your -- who you purchased the property from? Who did
21 you get the deed to your unit from, do you know? Was it
22 from Transeastern Laguna Lakes, or was it from a
23 different Transeastern entity?

24 A I would have to go back and -- to refresh my
25 memory. Off the top of my head, I do not know.

1 Q So, again -- so, it's -- just to clarify, so
2 in September 2003 we know that Transeastern Laguna Lakes
3 filed the Articles of Incorporation for the Laguna Lakes
4 Community Association Inc., right?

5 A Yes.

6 Q And as of that time, Transeastern was using
7 the name and logo, but we don't know that Laguna Lakes
8 Community Association, Inc. was using the logo, correct?

9 UNIDENTIFIED SPEAKER: Objection. Let's go
10 ahead, that's fine.

11 THE WITNESS: I don't know for sure that the
12 association was using it, because -- how can I
13 word this? I really don't remember the usage of
14 it. I know that Transeastern used it right
15 from -- the door, right from the very beginning.
16 As they started to put out sales, that was their
17 name and their -- and the logo that they chose.
18 The association was created by them to take care
19 of the community itself.

20 BY MR. BEHREN:

21 Q And so -- and when the quitclaim deed
22 deeding, I guess, from Laguna -- the common areas from
23 Transeastern Laguna Lakes, LLC to Laguna Lakes Community
24 Association, Inc. was signed in December of 2003, was
25 the -- as far as you know, was the community association

1 using the logo at all, or was it still only being used
2 by Transeastern?

3 A I really couldn't tell you what the board
4 was using at that time.

5 Q Okay. Isn't it true that the first time the
6 association actually used the logo was in 2006, when
7 they set up the LagunaLakesCommunityAssociation.com
8 website?

9 UNIDENTIFIED SPEAKER: Object.

10 BY MR. BEHREN:

11 Q You can answer the question, sir.

12 UNIDENTIFIED SPEAKER: Go ahead.

13 THE WITNESS: I -- I couldn't tell you one
14 way or the other if that was the first time or
15 not.

16 BY MR. BEHREN:

17 Q Okay. Well, sir, you were --

18 A I'm not sure.

19 Q You were designated, though, as the person
20 with the most knowledge of the first use of the trade --
21 sought trademarks and interstate commerce -- or, excuse
22 me, of the -- of the applied for trademarks here. So, I
23 guess my question is, if you don't know, who would know?

24 A I couldn't tell you that. I really couldn't
25 tell you.

1 Q Was Ms. Fammang on the board prior to you?

2 A Yes she was.

3 Q For how long?

4 A Let's see. I believe she was on the board
5 for a year a few years previous to me and then two years
6 during that time.

7 Q Would she have better knowledge than you as
8 to when the first use of the marks applied for with the
9 USPTO?

10 A You would have to ask her; I couldn't answer
11 that.

12 Q Because you don't know? But you don't --
13 you don't really have knowledge of it then?

14 A I don't have specific knowledge of
15 everything that a board did or did not do with the
16 association matters from the beginning of 2003 on,
17 especially since I didn't move in until December of '04.

18 Q Okay. So, as of December of '04, to your
19 knowledge, was the Laguna Lakes Community Association,
20 Inc. using the stylized name and logo, or was
21 Transeastern using it?

22 A I -- again, what a board does and does not
23 do, I -- you know, I -- I really don't know. I know
24 that I had gone to many of the meetings, not all of the
25 meetings. Exactly what they were and were not doing, I

1 could not tell you that. Without having to go back and
2 talk to each and every one of the board members from the
3 beginning, I couldn't speak for them.

4 Q But Laguna Lakes is a nonprofit entity,
5 correct?

6 A That's correct.

7 Q So, Laguna Lakes doesn't earn any profits
8 from the use of the Laguna Lakes name or logo, does it?

9 A No, it does not.

10 Q As far as you know, is -- are the Laguna
11 Lakes name and logo being used in interstate commerce?

12 UNIDENTIFIED SPEAKER: Objection.

13 BY MR. BEHREN:

14 Q You can answer, sir.

15 A Well, I believe that there is plenty of
16 interstate commerce going on, maybe not in the
17 traditional way of making a profit; however, most of the
18 owners that live there came from another state and
19 another country.

20 Q Okay.

21 A So, that would be, just as you post --
22 showed a letter from me back and forth from New Jersey,
23 okay, that was somewhat of an interstate commerce.
24 That's continually going on, and things like that.
25 Other -- you know, as far as to sell things to make a

1 profit, no, but to --

2 Q Okay.

3 A -- obviously deal with our residents one
4 way or the other, yes.

5 Q And when people are coming in, though, to
6 Laguna Lakes, who are they actually buying the
7 properties from? They are not buying them from the
8 association, correct?

9 A No, they are not.

10 Q They are buying them from Realtors like --

11 A That's --

12 Q -- or through Realtors like Mr. Marino,
13 right?

14 A That's absolutely correct.

15 Q So, you would agree that the Laguna Lakes
16 Community Association's responsibilities are very
17 localized, it's to maintain the common areas in the
18 development, correct?

19 A It's actually more than that, but I will go
20 along with that, but there is more. I mean, we have a
21 fiduciary duty to protect all of the assets of the
22 community. And we personally, as the board, we believed
23 that the name and the logo was -- fell under that
24 protection, and that's all we are trying to do, is
25 protect the community.

1 Q Okay. But my question again is that the
2 operations of the association --

3 A Uh-huh.

4 Q -- are very localized. It's an association
5 that --

6 A That's correct.

7 Q -- operates to maintain an association in
8 Fort Myers, Florida, right?

9 A That's correct.

10 Q So, let me -- if we can go back now to the
11 binder of documents, I guess, that we gave you.

12 MR. BEHREN: If you want, we could -- I
13 guess we could mark the rest of this binder of
14 documents as -- well, I'm just -- we'll do -- I
15 was going to say try to mark it as a composite
16 exhibit to make it easier, but in the binder
17 there -- if you could show the witness the binder,
18 please.

19 MR. ANNUNZIATA: I'm showing him all the
20 documents that you have received, Scott --

21 MR. HARDERS: Okay.

22 MR. ANNUNZIATA: -- and Chad.

23 MR. HARDERS: And if we could just pause
24 momentarily when we are talking about specific
25 ones, I would be grateful.

1 MR. ANNUNZIATA: The first page of it starts
2 with a hosting history.

3 MR. HARDERS: Okay.

4 MR. ANNUNZIATA: All right? Just to give
5 you a, you know, frame of reference.

6 MR. HARDERS: Okay. We have got that one in
7 front of us. Thank you.

8 And is this -- we were going to mark them
9 one at a time or all together?

10 MR. BEHREN: I guess we'll mark them one --
11 I will go through and we'll mark them one at a
12 time.

13 MR. HARDERS: Okay.

14 MR. BEHREN: Some of these I don't know that
15 he's going to have any personal knowledge of, to
16 be honest.

17 BY MR. BEHREN:

18 Q Just going to the second page of this
19 document, the -- do you recognize that site, that
20 document at all?

21 A No.

22 Q The -- it would -- this would be a printout
23 of the LagunaLakes.com site operated by Transeastern.
24 You never saw that before?

25 A No.

1 UNIDENTIFIED SPEAKER: Are we marking this
2 one, or we're not sure yet?

3 MR. BEHREN: Well, if he doesn't recognize
4 it, there's, I guess, no point in -- in marking
5 it.

6 UNIDENTIFIED SPEAKER: Yeah, fair enough.
7 I'm comfortable with that.

8 BY MR. BEHREN:

9 Q All right. Let's go to -- there is a --
10 after a bunch of the different website printouts here,
11 there's something called Community Association, Inc.
12 board of director's meeting minutes from August 22nd,
13 2011.

14 A Okay.

15 UNIDENTIFIED SPEAKER: Can you just give us
16 one minute to find that one?

17 UNIDENTIFIED SPEAKER: It's the notes of a
18 board of director's meeting?

19 MR. ANNUNZIATA: It looks like a flyer for
20 one.

21 MR. BEHREN: No, no.

22 MR. ANNUNZIATA: No?

23 MR. MARINO: Minutes.

24 MR. BEHREN: It's minutes of a board of
25 director's meeting.

1 MR. ANNUNZIATA: Oh, approved minutes.

2 Yeah, I'm sorry, approved minutes.

3 UNIDENTIFIED SPEAKER: Approved minutes?

4 MR. ANNUNZIATA: Held on August 22nd, 2011.

5 It's after something -- there is a page 31 on it.

6 Hold on.

7 UNIDENTIFIED SPEAKER: It sounds -- I think
8 we have that, so we are going to just pull up our
9 copy of it and follow along that way.

10 MR. ANNUNZIATA: It's about 24 pages into
11 it, it's got the Laguna Lakes logo at the top.

12 UNIDENTIFIED SPEAKER: Is it marked with an
13 Exhibit 5, dash, bravo at the top?

14 MR. ANNUNZIATA: No.

15 UNIDENTIFIED SPEAKER: No? So, maybe that
16 was our -- our -- our marking.

17 (Off-the-record discussion.)

18 UNIDENTIFIED SPEAKER: Is it two pages long,
19 three pages?

20 MR. BEHREN: Yes.

21 MR. ANNUNZIATA: Three pages.

22 UNIDENTIFIED SPEAKER: I think I have got a
23 copy of it, so let's go -- I think just go ahead.

24 BY MR. BEHREN:

25 Q All right. Asking you about the approved

1 minutes from August 22nd of 2011. Present, I guess, at
2 the meeting was yourself, Ms. Flammang, Bob Hajicek,
3 Jeff Kelly, and Mary Ann Cowart, correct?

4 A Correct.

5 Q By the way, let me ask you another question.
6 In preparation for your deposition here today, did you
7 speak with anybody other than your counsel?

8 A No, I did not.

9 Q Have you spoken with any of the other board
10 members, such as Ms. Flammang, Hajicek, Kelly, or Cowart
11 with regard to your deposition in this case?

12 A No, I did not.

13 Q Have you spoken with any of these board
14 members regarding Mr. Marino's opposition to the
15 registration of this mark, since he -- since it was
16 filed?

17 A Have we spoken about it?

18 Q Yes.

19 A Of course, we spoke about it.

20 Q Okay. What have you guys discussed about
21 it?

22 A We have discussed the idea that we applied
23 for the trademark.

24 MR. ANNUNZIATA: Just to be clear, and I'm
25 sorry, who -- who -- who are you talking about?

1 Who -- who communicated with who?

2 MR. BEHREN: Discussions between Mr. Tardiff
3 and the fellow board members relating to the
4 opposition to the mark filed by us --

5 MR. ANNUNZIATA: Okay, I'm sorry. I thought
6 you --

7 MR. BEHREN: -- by Mr. Marino.

8 MR. ANNUNZIATA: -- I thought you were
9 referring to one particular person.

10 MR. BEHREN: Okay.

11 MR. ANNUNZIATA: Sorry. Go ahead.

12 UNIDENTIFIED SPEAKER: But we will have to
13 object briefly if the conversations were with the
14 current board member but also the attorney of
15 record, Donna Flammang.

16 BY MR. BEHREN:

17 Q So, who did you have discussions with about
18 Mr. Marino's opposition to their registration of the
19 trademark?

20 A Well, starting in the very beginning, we had
21 a discussion as to, do we go ahead with this or not, so
22 yes, we --

23 Q Where, at the board meeting?

24 A I would imagine at the board meeting,
25 singularly, walking through the neighborhood as we would

1 see each other, we would discuss certain -- different
2 things and whatnot. There are times where that probably
3 did come up.

4 Q Okay. Well, what was --

5 A Because it has --

6 Q -- what do you re --

7 A Because it has gone on for a very long time,
8 yes.

9 Q Just tell me what you recall about the
10 discussions you had with the fellow board members about
11 this opposition to the trademark or trademarks.

12 UNIDENTIFIED SPEAKER: Again, with the
13 exception of Attorney Donna Flammang.

14 THE WITNESS: Correct.

15 This -- the discussion really is more or
16 less about the idea of we are not quite certain
17 why this is being objected to, as the association,
18 this is clearly all up on everything that
19 identifies Laguna Lakes, and there is no other
20 entity outside that's had a problem with this, and
21 it comes from a fellow resident on the inside.

22 And like I said in this deposition, no one
23 has a problem with Mr. Laguna Lakes. What we do
24 have a problem with is Laguna Lakes and the emblem
25 to go with it and you represent yourself that

1 particular way, whether it's Mr. Marino or any
2 other person or entity.

3 BY MR. BEHREN:

4 Q Just to clarify something else, too,
5 Ms. Flammang, was she a board member, or was she the
6 board attorney?

7 A She is a board member and, for this
8 particular case, the board attorney.

9 Q Why is it that the board elected to use
10 Ms. Flammang as the board attorney -- I mean, as a -- as
11 the attorney when she was on the board? Why not find an
12 outside --

13 MR. ANNUNZIATA: Object.

14 Q -- law firm to represent them?

15 MR. ANNUNZIATA: Objection. I think you're
16 getting into attorney/client privilege.

17 MR. BEHREN: All right. I don't know that I
18 am, if it was discussed among board members at a
19 public meeting as to --

20 MR. ANNUNZIATA: With an attorney.

21 MR. BEHREN: Well, I don't know it was
22 discussed with an attorney.

23 BY MR. BEHREN:

24 Q Was Ms. Flammang wearing her attorney hat,
25 or was she wearing her board member hat at the time?

1 Tell me how it was that you all -- that the board
2 managed to utilize Ms. Flammang as the attorney for this
3 rather than some outside counsel.

4 A The reason that we chose Ms. Flammang was
5 that this was a -- really an application. We didn't
6 believe that there would be any objections. We didn't
7 believe -- we had no knowledge of anyone out there that
8 was utilizing it in that fashion, and we didn't believe
9 that there would be any opposition to it. So, it's
10 cheap enough, and Ms. Flammang had experience in this,
11 that the board decided to go the cheapest route
12 possible.

13 Q All right. Now, looking at the minutes here
14 of the meeting, it says here that, I guess, Ms. Cowart
15 made a motion.

16 Ms. Cowart is another Realtor, correct?

17 A Yes, she is.

18 Q She would be a competitor of Mr. Marino's,
19 correct?

20 A No.

21 UNIDENTIFIED SPEAKER: Objection.

22 BY MR. BEHREN:

23 Q Why not?

24 A She's --

25 UNIDENTIFIED SPEAKER: Continued.

1 But go ahead, if you know, Patrick.

2 THE WITNESS: She's not part of the -- she
3 practices over in -- in Sanibel Captiva only, as
4 far as -- to my knowledge, that's it.

5 BY MR. BEHREN:

6 Q Okay. So, you don't know whether or not
7 she's a competitor then of Mr. Marino's?

8 A I believe that she's a Realtor for those --
9 that specific area, that's it. So, unless Mr. Marino is
10 selling over there --

11 Q Is it true that -- did Mr. -- did Ms. Cowart
12 say something in this meeting about, if we get this mark
13 registered, then that means Gerard can't use it anymore?

14 UNIDENTIFIED SPEAKER: Objection.

15 THE WITNESS: I -- I really don't recall
16 specifically exactly what was said. However, I
17 knew -- I do know that when all of this was going
18 on, this was more about others, not just Marino.

19 BY MR. BEHREN:

20 Q With regard to -- it says here it was going
21 to be a cost of around \$2,700. Is that how much has
22 been paid on this trademark application by the
23 association?

24 A I --

25 MR. ANNUNZIATA: Object to the form, and --

1 and --

2 MR. BEHREN: Again, we got -- hold on a
3 second, hold on a second.

4 MR. ANNUNZIATA: Attorney/client privilege.

5 MR. BEHREN: No, no, no, no, no. I'm not --

6 MR. ANNUNZIATA: You can -- you can argue
7 all day long --

8 MR. BEHREN: I'm not going to have --

9 MR. ANNUNZIATA: -- I'm going to raise
10 attorney/client --

11 MR. BEHREN: I'm not going to have three
12 lawyers here making objections.

13 MR. ANNUNZIATA: But I'm going --

14 MR. BEHREN: Mr. Harders is on the phone, he
15 is perfectly capable of --

16 MR. ANNUNZIATA: And so am I.

17 MR. BEHREN: -- making objections that he
18 deems necessary.

19 MR. ANNUNZIATA: Okay. We can fight about
20 that all day long. I think you're getting into
21 the attorney/client --

22 MR. BEHREN: So I --

23 MR. ANNUNZIATA: -- privilege.

24 MR. BEHREN: Well, I -- I would disagree,
25 considering the fact that this would be a board

1 issue that would be public knowledge to all
2 members of the association.

3 BY MR. BEHREN:

4 Q So, my question is, have you all expended
5 approximately \$2,700 so far in the registration of these
6 trademarks?

7 UNIDENTIFIED SPEAKER: Objection.

8 And I'm going to instruct Patrick not to
9 answer on the basis of attorney/client privilege.

10 MR. BEHREN: How is it privileged?

11 BY MR. BEHREN:

12 Q Let me ask you this: Would the members of
13 the association be entitled to know how much was spent
14 on the -- on this particular trademark application thus
15 far? Would you agree that that would be information
16 that members are entitled to?

17 UNIDENTIFIED SPEAKER: I don't know.

18 MR. BEHREN: I'm asking the witness.

19 THE WITNESS: It -- to my knowledge, legal
20 matters are not public knowledge.

21 MR. MARINO: It's financial.

22 BY MR. BEHREN:

23 Q We are asking how much was spent, the
24 expenditures.

25 A To my knowledge, for legal, it's not public

1 knowledge, so it doesn't mean -- it has nothing to do
2 with that.

3 Q So, you all are saying that you don't -- you
4 won't let the association members know how much you all
5 have spent so far on this trademark application; would
6 that be a correct statement?

7 UNIDENTIFIED SPEAKER: Object.

8 Patrick, if you know the answer to this, I
9 mean, go ahead.

10 THE WITNESS: The specific amount I do not
11 know. I do know that we have gone above \$2,700.

12 BY MR. BEHREN:

13 Q Okay. How about approximately? Do you know
14 approximately how much has been spent so far in the --

15 UNIDENTIFIED SPEAKER: Objection.

16 Q -- prosecution of these trademarks?

17 (Off-the-record discussion.)

18 MR. ANNUNZIATA: Every lawyer has objected
19 on the defense -- on the defense side as to the
20 attorney/client privilege.

21 BY MR. BEHREN:

22 Q Approximately, do you know?

23 MR. ANNUNZIATA: Instructing him not to
24 answer.

25

1 BY MR. BEHREN:

2 Q Okay, sir. Don't you think -- you said you
3 owe a fiduciary duty to members of the association,
4 right?

5 A Yes.

6 Q Don't you think it would be a fiduciary
7 obligation of yours to allow the members to know how
8 much the association has spent on trying to prosecute
9 these particular trademark applications?

10 UNIDENTIFIED SPEAKER: Objection. You're
11 harassing now. He has answered the question.

12 We --

13 MR. BEHREN: Harassing?

14 MR. ANNUNZIATA: We -- we --

15 UNIDENTIFIED SPEAKER: -- (inaudible) on the
16 basis of attorney/client privilege.

17 MR. BEHREN: Okay. Well, this is -- I'm
18 going to ask the question. If you want to claim
19 that's attorney/client privilege and instruct him
20 not to answer, that's your prerogative.

21 Can you read back --

22 UNIDENTIFIED SPEAKER: We don't want you to
23 continue to harass --

24 MR. BEHREN: I'm sorry?

25 UNIDENTIFIED SPEAKER: -- the witness, who's

1 (inaudible) --

2 MR. ANNUNZIATA: Please get his last
3 statement on the record.

4 (Off-the-record discussion.)

5 MR. HARDERS: Attorney Harders has said that
6 I object to the continued harassment of the
7 witness, who has answered this question, on -- on
8 counsel's advice, not answer, based on
9 attorney/client privilege, and request that we
10 move on.

11 MR. BEHREN: That wasn't my last question,
12 though.

13 BY MR. BEHREN:

14 Q My last question, sir, was you conceded and
15 testified, I believe, before that it -- that you believe
16 you have a fiduciary obligation to the interests of the
17 master association, right?

18 UNIDENTIFIED SPEAKER: Object, asked and
19 answered.

20 BY MR. BEHREN:

21 Q Okay. So, my question is, do you believe
22 that, having a fiduciary obligation to the master
23 association, that the members of the association should
24 be entitled to know what's being spent on this trademark
25 application?

1 UNIDENTIFIED SPEAKER: Object, legal
2 conclusion.

3 BY MR. BEHREN:

4 Q You can answer the question, sir, unless he
5 tells you not to answer it.

6 UNIDENTIFIED SPEAKER: You can go ahead and
7 answer that. Not the amount, but do you think
8 that you have an obligation to let the members
9 know the cost?

10 MR. BEHREN: Well, that wasn't -- I don't
11 think that was really my question.

12 UNIDENTIFIED SPEAKER: (Inaudible) Court
13 reporter please repeat the question.

14 (Off-the-record discussion.)

15 (Portion of the record read back by the
16 court reporter.)

17 UNIDENTIFIED SPEAKER: Patrick, you can
18 answer that.

19 THE WITNESS: Okay.

20 UNIDENTIFIED SPEAKER: It's phrased as a yes
21 or no, I suppose.

22 THE WITNESS: Yes. Do I believe they
23 should? Yes, I believe they should; however, I
24 have been told --

25 MR. ANNUNZIATA: Object to -- instruct

1 you --

2 THE WITNESS: Not --

3 MR. ANNUNZIATA: -- not to answer --

4 THE WITNESS: Okay.

5 MR. ANNUNZIATA: -- based on the
6 attorney/client privilege.

7 THE WITNESS: All right.

8 MR. ANNUNZIATA: All right?

9 THE WITNESS: Okay.

10 BY MR. BEHREN:

11 Q All right. So, let's flip now to a couple
12 more pages down here, which would be the TS plus
13 application dated September 2nd, 2011, serial number
14 85414343. And it would be four pages.

15 UNIDENTIFIED SPEAKER: Thank you. And is
16 this going to be the next exhibit?

17 MR. BEHREN: Yeah, we can mark this as the
18 next exhibit, which will be exhibit --

19 MR. MARINO: This one over here?

20 MR. BEHREN: What are we up to, D?

21 MR. MARINO: Right.

22 MR. BEHREN: Well, actually, let me --
23 let's -- let me just clarify then. I think I had
24 A, B, C. We are going to mark these minutes,
25 we'll mark them as Exhibit D.

1 THE WITNESS: You already had a D.

2 (Off-the-record discussion.)

3 MR. BEHREN: So, Exhibit F will be the board
4 of director meeting minutes from August 22nd,
5 2011.

6 (Deposition Exhibit F was marked for
7 identification.)

8 (Off-the-record discussion.)

9 MR. BEHREN: And then Exhibit G I want to be
10 this application for the logo.

11 MR. ANNUNZIATA: Do you have that, Scott?

12 MR. HARDERS: I do, thank you.

13 MR. ANNUNZIATA: All right.

14 (Deposition Exhibit G was marked for
15 identification.)

16 MR. BEHREN: I will give it to you, so -- I
17 mean, I don't need it for right now, but just so
18 we have the full set of exhibits when she -- when
19 we do the transcript.

20 BY MR. BEHREN:

21 Q All right. So, you recognize this document,
22 sir?

23 A I believe I have seen it before.

24 Q Okay. Isn't it true that this would be the
25 application for the trademark on the Laguna Lakes logo?

1 A Yes.

2 Q And on the third page of this document, it
3 says first use anywhere, at least as early as October
4 6th, 2003.

5 Do you know -- where did that date come
6 from, October 6th, 2003?

7 A I believe at that time, when this was going
8 through, that there was a second application to the
9 county at -- at that date. The first one was in
10 September of '03, and I believe the second one was
11 August of '03. And I am guessing that that was the
12 first one that came up, and that's why it was used that
13 particular way.

14 Q So you -- but you're not sure? You don't
15 have knowledge, then, of where this October 6th, 2003
16 first-use-anywhere date came from, correct?

17 A I'm -- I am -- I remember talking about the
18 date, I just don't specifically remember exactly what
19 that date was.

20 Q Who did you talk with the date about?

21 A My attorney.

22 Q Who, Ms. Flammang?

23 A Yes.

24 Q Would Ms. Flammang then be the person who
25 would have the most knowledge as to when this -- where

1 this October 6th, 2003 first-use-anywhere date came
2 from?

3 UNIDENTIFIED SPEAKER: Object.

4 MR. ANNUNZIATA: Object to the form.

5 UNIDENTIFIED SPEAKER: You can go ahead and
6 answer.

7 THE WITNESS: I would imagine that she
8 probably would know more than I, yes.

9 BY MR. BEHREN:

10 Q On this -- also there is a specimen here, it
11 says web -- webpage of Laguna Lakes Community
12 Association, Inc.

13 A Uh-huh.

14 Q So, would you -- would you agree that the
15 specimen of the logo came from the
16 LagunaLakesCommunityAssociation.com webpage?

17 MR. ANNUNZIATA: What are you showing --

18 THE WITNESS: That's the --

19 MR. BEHREN: Oh, we already went through it
20 as part --

21 MR. ANNUNZIATA: Showing --

22 MR. BEHREN: -- of your --

23 MR. ANNUNZIATA: -- the web page --

24 MR. BEHREN: -- production, too.

25 THE WITNESS: Right.

1 MR. ANNUNZIATA: He's showing him the
2 webpage, Scott.

3 MR. BEHREN: I'm showing him the webpage.

4 MR. ANNUNZIATA: A photocopy of the webpage.

5 THE WITNESS: Yeah, a photocopy.

6 I would generally have to say yes.

7 BY MR. BEHREN:

8 Q And you would agree that this
9 LagunaLakesCommunityAssociation.com website wasn't set
10 up until 2006, correct?

11 A I am -- I -- I still don't have exact
12 remembrance of an exact date of when that website was
13 brought forward.

14 Q And you don't -- who would have the most
15 knowledge as to when it was that the
16 LagunaLakesCommunityAssociation.com website was set up?

17 A I couldn't tell you. I honestly couldn't
18 tell you.

19 I would imagine -- I can't even say that --
20 to go to Alliant Property Management, because I don't
21 believe that they were the management company at that
22 time, so --

23 Q Would you -- would you -- did you bother --
24 would you have looked on the -- have you ever looked at
25 the history of the domain name to see when it was first

1 purchased or acquired by Laguna Lakes?

2 A No, I have not.

3 Q Going back to --

4 MR. BEHREN: Can you give me that document?

5 MR. MARINO: Uh-huh.

6 MR. BEHREN: We'll mark that one as an
7 exhibit, too.

8 MR. MARINO: Absolutely.

9 MR. ANNUNZIATA: Marking the whole
10 application --

11 MR. BEHREN: No.

12 MR. ANNUNZIATA: -- and attachment?

13 MR. BEHREN: We already marked the -- we are
14 going to mark the application as G, I already said
15 that.

16 MR. MARINO: Uh-huh.

17 MR. BEHREN: We are going to mark as Exhibit
18 H this next document.

19 (Deposition Exhibit H was marked for
20 identification.)

21 MR. BEHREN: Which is part of the big
22 composite binder of documents here.

23 MR. ANNUNZIATA: Which one is it?

24 MR. BEHREN: It's -- it's a printout, I
25 guess, of the -- the who-is information for Laguna

1 Lakes --

2 MR. ANNUNZIATA: Let me take a look at it,
3 please.

4 MR. BEHREN: -- Association.com.

5 MR. ANNUNZIATA: I haven't been able to get
6 to it yet.

7 MR. MARINO: About 20 pages in.

8 MR. BEHREN: I just -- I just gave it to
9 him.

10 MR. ANNUNZIATA: Right. And I pulled it
11 over --

12 MR. BEHREN: Oh.

13 MR. ANNUNZIATA: -- here for a second,
14 because I'm trying to match it and see it, and
15 also make sure they can see it. Can you -- do you
16 guys know what he's talking about?

17 UNIDENTIFIED SPEAKER: I heard it was who-is
18 information for -- what was the website?

19 MR. ANNUNZIATA: It starts at the top, it
20 says domain name, LagunaLakesAssociation.com,
21 register, and has all these -- it says register
22 URL, GoDaddy, updated date, creation date,
23 registered expiration date, registrar.

24 UNIDENTIFIED SPEAKER: Is there a call-out
25 box with an arrow?

1 MR. ANNUNZIATA: Yeah. It says created
2 8-24-2006.

3 UNIDENTIFIED SPEAKER: I see it. Thank you.

4 MR. ANNUNZIATA: Okay. And it's got a whole
5 long line, and then the little -- it looks like
6 GoDaddy.com.

7 UNIDENTIFIED SPEAKER: H?

8 MR. ANNUNZIATA: That's H.

9 UNIDENTIFIED SPEAKER: Thank you.

10 MR. ANNUNZIATA: Thank you.

11 MR. MARINO: He's got it.

12 MR. BEHREN: Huh?

13 MR. MARINO: He's got it.

14 MR. BEHREN: Yeah.

15 MR. ANNUNZIATA: He's got it.

16 BY MR. BEHREN:

17 Q Would this document at all help to refresh
18 your recollection about when LagunaLakesAssociation.com
19 was first set up online by the Laguna Lakes Community
20 Association, Inc.?

21 A Yes.

22 Q When would that have been?

23 A It says here created 8-24-2006.

24 Q So, the -- the specimen to your application
25 for the logo was actually apparently used for the first

1 time in August of 2006, correct?

2 A Correct.

3 Q Also on the -- on the --

4 MR. BEHREN: Can you give me the second part
5 of the application, with the disclaimer
6 information, please?

7 Actually, this should all be part of, I
8 guess, the same thing, now that I think about it.
9 This is all part -- going to be still part of
10 Exhibit G.

11 Flipping -- yeah, flipping on to the
12 remainder of Exhibit G there, you'll see here
13 where it says to the commissioner of -- for
14 trademarks.

15 MR. ANNUNZIATA: So, it's not H, now it's G,
16 or --

17 MR. BEHREN: Well, H is the GoDaddy thing I
18 just showed.

19 MR. ANNUNZIATA: Right.

20 MR. BEHREN: The prior exhibit was G, which
21 is the application for the logo.

22 MR. ANNUNZIATA: Okay.

23 MR. BEHREN: Okay? What I am asking about
24 is there is -- there is these pages that have the
25 various blocks, and then there is something

1 called, to the commissioner for trademarks.

2 THE WITNESS: Do you have -- did you --

3 MR. ANNUNZIATA: It's right here.

4 THE WITNESS: I know where we have it here,
5 but he doesn't have one.

6 MR. ANNUNZIATA: Marked -- he hasn't marked
7 it yet.

8 THE WITNESS: Yeah. Okay, that's fine.

9 MR. ANNUNZIATA: We don't have it marked G
10 in this stack here.

11 THE WITNESS: Yeah.

12 MR. MARINO: This is all --

13 THE WITNESS: That's fine.

14 MR. BEHREN: Now it's all marked as G in the
15 stack.

16 THE WITNESS: Okay. I just --

17 MR. ANNUNZIATA: You guys have that?

18 UNIDENTIFIED SPEAKER: We have it. Thank
19 you.

20 MR. ANNUNZIATA: All right.

21 THE WITNESS: Okay. All right. So, we are
22 back to this now? Is that where we're at, G?

23 MR. ANNUNZIATA: Yeah.

24 MR. BEHREN: Right, G.

25

1 BY MR. BEHREN:

2 Q And where it says here commission -- to the
3 commissioner for trademarks, and the next page in, I
4 guess it has here applicant's website address is
5 www.LagunaLakesAssociation.com, and then it has Donna
6 Flammang, correct? You see that?

7 A I'm trying to get there.

8 Q I believe --

9 MR. ANNUNZIATA: Where are you looking at?

10 I don't --

11 MR. BEHREN: The page after, where it says
12 to the commissioner for trademarks.

13 MR. ANNUNZIATA: Uh-huh.

14 THE WITNESS: Okay, yes.

15 BY MR. BEHREN:

16 Q Okay. And then it has a declaration in
17 here, too, right?

18 A Uh-huh.

19 Q It says that all false statements and the
20 like so made are punishable by fine or imprisonment or
21 both, correct?

22 A Yes, it says that.

23 Q And it says, I guess, the applicant believes
24 the -- applicant believes to be the owner of the
25 trademark, service mark, sought to be registered,

1 correct?

2 A Yes.

3 Q And you also -- it was also certified here
4 that no other person, firm, corporation, or association
5 has the right to use the mark in commerce, right?

6 A That's correct.

7 Q Why was Mr. Marino not listed there as
8 somebody who had been using the mark in commerce?

9 A I have no idea.

10 Q Why was Transeastern not indicated as
11 somebody else who --

12 A Transeastern --

13 Q -- had the right to use the mark in
14 commerce?

15 A Because TransEastern went bankrupt.

16 Q Well, Transeastern went in -- then was
17 merged with TOUSA, right?

18 A Yeah.

19 Q TOUSA went into bankruptcy, right?

20 A Yeah.

21 Q That bankruptcy is still open, correct?

22 UNIDENTIFIED SPEAKER: Object. I mean, who
23 knows?

24 MR. BEHREN: I can -- I can tell you for a
25 fact that it's still open and active over in the

1 Southern District of Florida, in Fort Lauderdale,
2 so --

3 MR. HARDERS: Object to --

4 BY MR. BEHREN:

5 Q Why did you not disclose that TOUSA was a --
6 somebody who had the right to use the mark in commerce?

7 MR. ANNUNZIATA: Sorry, he had an objection.

8 Scott, you had -- you were stating an
9 objection, I don't think it got on the record.

10 MR. HARDERS: No, I did object.

11 MR. ANNUNZIATA: You want to restate it, so
12 she can get it?

13 MR. HARDERS: Yes. I object to the -- to
14 the last question. I'll just leave it at that,
15 and -- but the witness can answer.

16 MR. ANNUNZIATA: Okay.

17 THE WITNESS: Okay. What was that question
18 again, so that I can --

19 MR. BEHREN: Can you read back --

20 THE WITNESS: -- refresh what we're asking?

21 MR. BEHREN: -- the last question?

22 Can you read back the last question for me,
23 please?

24 (Off-the-record discussion.)

25 (Portion of the record read back by the

1 court reporter.)

2 UNIDENTIFIED SPEAKER: That was the one that
3 was objected to.

4 THE WITNESS: I have no idea why it would be
5 or would be not be on there.

6 BY MR. BEHREN:

7 Q Okay. And where it says here, too, that all
8 the statements in here are true and are believed to be
9 true, you don't have any knowledge of whether or not any
10 of the statements in this application are true or
11 believed to be true, correct?

12 A I would actually have to go over step by
13 step before I actually answered something like that.

14 Q Let me ask you this: Would it -- would
15 you -- would it be a fair statement that the person who
16 would have the most knowledge as to what was put in this
17 application and why would have been -- would be
18 Ms. Flammang?

19 A She has the most knowledge of what went into
20 the -- because she actually put the application
21 together.

22 Q You, as the association president, didn't
23 tell Ms. Flammang what to put in this application,
24 Ms. Flammang --

25 UNIDENTIFIED SPEAKER: Object.

1 Q -- put it in there herself, correct?

2 MR. ANNUNZIATA: Object, and instruct --

3 UNIDENTIFIED SPEAKER: And we're not --

4 don't answer that one, please.

5 MR. ANNUNZIATA: Instructing you not to
6 answer that, based on attorney/client privilege.

7 BY MR. BEHREN:

8 Q As the president of the association, did you
9 review this application, Exhibit G, before it was
10 submitted by Ms. Flammang, to make sure it was truthful
11 and accurate?

12 A I did review it, yes.

13 Q And did you indicate to her that anything in
14 it was inaccurate?

15 UNIDENTIFIED SPEAKER: Object. Don't
16 answer, please.

17 MR. ANNUNZIATA: Based on attorney/client
18 privilege.

19 BY MR. BEHREN:

20 Q Did the board approve the application before
21 submitting it to the trademark office?

22 A I am -- I believe they did. I mean,
23 everything is always a board -- it's always the board
24 that answers everything, so I would have to say yes.
25 But the reality is I don't remember one way or the

1 other.

2 Q Would there have been board minute meetings
3 based -- for the review and approval of those, of this
4 application?

5 A If it was done in a meeting, there would
6 be -- it would be on there.

7 Q Well, would it have been done in a meeting?

8 A Based on it being legal, no, not
9 necessarily.

10 Q You don't know?

11 A No. Based on the idea that this is all
12 legal stuff, legal stuff is not public knowledge.

13 Q So, you would have had separate meetings
14 relating to this stuff; is that what you --

15 A I don't believe that there was a separate
16 meeting. I believe that we each individually got a copy
17 of it and looked at it.

18 (Deposition Exhibit I was marked for
19 identification.)

20 BY MR. BEHREN:

21 Q Okay. Let me show you what's been -- what
22 I'm marking as Exhibit I, which would be the application
23 for the mark for the name Laguna Lakes. Do you
24 recognize this document?

25 A I believe I do.

1 Q And if you look at the second page of
2 Exhibit I, and you see here on the second page where it
3 says your -- it has -- the first page has Laguna Lakes
4 Community Association, Inc., and then you see here where
5 it says website address --

6 A Uh-huh.

7 Q -- www.LagunaLakes.com?

8 A Yes.

9 Q You would agree that the Laguna Lakes
10 Community Association has never owned LagunaLakes.com,
11 correct?

12 A Correct.

13 Q So, that would be a -- completely inaccurate
14 information contained here in this application, correct?

15 A I would say it was a typo, yes.

16 Q Why would you say it's a typo?

17 A Because right down here it says
18 www.LagunaLakesAssociation.com.

19 Q Okay. But that -- and that was used for --
20 to cite to the specimen; in other words, where the --
21 where the proof of the applied-for mark came from,
22 right?

23 A Right.

24 Q And that, we already talked about, wasn't
25 set up until August of 2006, correct?

1 A Correct.

2 Q And also the first use in anywhere date says
3 October 6th, 2003. You don't have personal knowledge as
4 to where -- what that date came from, correct?

5 A As I stated before, I believe that it was a
6 second registered mark, that Transeastern had went down
7 to the county and --

8 Q But you -- but you don't know, right?

9 A No.

10 Q I think you testified --

11 A Yeah, I --

12 Q -- you were the person who would have the
13 most --

14 A That's what I believe it is, but I cannot
15 remember specifically.

16 Q I believe -- and you testified, I think,
17 before that you believe the person who would have the
18 most knowledge as to where that date came from would be
19 Ms. Flammang, right?

20 UNIDENTIFIED SPEAKER: Objection.

21 Go ahead and answer.

22 THE WITNESS: Correct.

23 MR. MARINO: Scott, can I see you for a
24 second?

25 MR. BEHREN: Yeah.

1 (A brief recess was taken.)

2 BY MR. BEHREN:

3 Q So, referring again to Exhibit I, you're
4 seeking to obtain a trademark on the name Laguna Lakes?

5 A Yes.

6 Q Is it your contention that no one else is
7 allowed to use the name Laguna Lakes?

8 UNIDENTIFIED SPEAKER: Objection.

9 Go ahead, Patrick, if you -- if you can
10 answer.

11 THE WITNESS: It's my contention that, as a
12 registered mark, people can use it if they gain
13 permission somehow, someway, correct?

14 MR. BEHREN: I'm not answering the questions
15 here.

16 THE WITNESS: Okay.

17 MR. BEHREN: My question is --

18 THE WITNESS: My --

19 BY MR. BEHREN:

20 Q -- are you all seeking to prevent anybody
21 from using the name Laguna Lakes?

22 A No.

23 Q Okay. You're aware that there is other
24 developments in West Palm Beach, in California, around
25 the country, all that are -- developments that are all

1 called Laguna Lakes, right?

2 A Correct.

3 UNIDENTIFIED SPEAKER: Objection.

4 THE WITNESS: I --

5 BY MR. BEHREN:

6 Q Are you aware also that, in fact, the Laguna
7 Lakes in Florida is actually based on a Laguna Lakes out
8 in California?

9 UNIDENTIFIED SPEAKER: Objection.

10 THE WITNESS: Couldn't tell you.

11 BY MR. BEHREN:

12 Q And with regard to -- you said that there
13 was an issue with regard to the Mr. -- with regard to
14 Mr. Marino's use of the logo. What if Mr. Marino took
15 pictures of the signs to the development, would you
16 consider that to be violating your proposed trademark?

17 UNIDENTIFIED SPEAKER: Objection.

18 You can answer, Patrick, if you know.

19 THE WITNESS: Pictures of a sign are one
20 thing. Actually printing a logo with the name
21 Laguna Lakes on it is actually representation of
22 the association of which is --

23 MR. BEHREN: So --

24 THE WITNESS: -- not.

25 MR. BEHREN: Go ahead.

1 BY MR. BEHREN:

2 Q So, it's your -- it's your contention, at
3 least it is your belief, that Mr. Marino's use of a
4 picture of the signs or the front gate to Laguna Beach
5 would not necessarily be objectionable to the board; is
6 that correct?

7 UNIDENTIFIED SPEAKER: Objection.

8 BY MR. BEHREN:

9 Q You can answer.

10 A I can answer for the -- the board sitting
11 right now that I believe objection would be held -- when
12 you -- you have the signs of a -- with the logo and the
13 name, it presents a problem. If you have a picture of
14 the front sign, that's not actually a problem.

15 Q By the way, the -- the front signs to the
16 development, do you know -- do you know when those were
17 erected?

18 A I believe it was somewhere in the middle of
19 '03. I don't have an exact date.

20 Q So, you don't know?

21 A No, but I -- the best of my knowledge, it
22 was somewhere in the middle of '03.

23 Q What do you base that on?

24 A Speaking with other residents that were here
25 previous to myself.

1 Q Okay. So, your knowledge of when the signs
2 were erected is based on hearsay --

3 A Correct.

4 Q -- relayed to you from third parties?

5 A That's it.

6 Q Are you aware of whether or not there's
7 actually a natural -- actually lakes out in California
8 called Laguna Lakes?

9 A Am I aware of that?

10 Q Yeah.

11 A No.

12 (Deposition Exhibit J was marked for
13 identification.)

14 MR. BEHREN: We'll mark this document as
15 Exhibit J.

16 UNIDENTIFIED SPEAKER: If you could just
17 help us find it.

18 MR. ANNUNZIATA: You're not going to be able
19 to find it.

20 MR. BEHREN: It's original marketing
21 materials.

22 MR. ANNUNZIATA: It's original marketing
23 materials from Transeastern.

24 I have a phone -- I have a camera. I'm
25 going to take a picture of it and send it to you.

1 UNIDENTIFIED SPEAKER: Okay. That would be
2 helpful. Thank you.

3 MR. ANNUNZIATA: I mean, as needed, you
4 know, and you can look at it as you go.

5 If there's anything in particular, I ask
6 that you give me a moment to send it to them,
7 so --

8 Go ahead.

9 MR. BEHREN: Okay.

10 BY MR. BEHREN:

11 Q With regard to that particular
12 documentation, Exhibit J there, you would agree that --
13 if you'd open up the cover there -- keep going, keep
14 going. There.

15 You would agree that it references the
16 attempting to create the California lifestyle, correct?

17 A Correct.

18 Q And, in fact, all of the little parcels were
19 all named after areas in California, too, like Beverly
20 Hills, Santa Barbara, Monterey, right?

21 A That's correct.

22 MR. ANNUNZIATA: It's coming to you, Scott.

23 MR. HARDERS: Not yet.

24 BY MR. BEHREN:

25 Q You would agree -- you would admit also that

1 Laguna Lakes Community Association is not licensed to
2 broker or sell real estate, correct?

3 A That's correct.

4 Q They are also not licensed to broker or
5 lease real estate, correct?

6 A That's correct.

7 Q And you would agree that the primary source
8 of revenue for the Laguna Lakes Community Association
9 are homeowners' association fees?

10 A That's correct.

11 Q That would be, I'm assuming, the only source
12 of revenues, correct? That maybe and rental of the
13 clubhouse?

14 A And rental of the clubhouse.

15 Q You would admit that Gerard Marino's use of
16 the name and logo doesn't impact Laguna Lakes Community
17 Association's revenues whatsoever?

18 A It hasn't to date; it has the capability of
19 doing so.

20 Q How?

21 A Let's say that Mr. Marino upsets someone
22 that he is doing business with, a client, so to speak,
23 and this client comes back to us and starts to sue him
24 and us, as a representative of, we -- simply we are
25 trying to protect the assets of that.

1 Q And you -- you would agree that for years
2 prior to filing the trademark applications, that
3 Mr. Marino and other Realtors had been using the name
4 Laguna Lakes and the logo, correct?

5 A Not the logo, no.

6 And I'm not really that aware of how many
7 years previous, but I do know that once we started
8 seeing many other Realtors use it, you know, a few other
9 using it and whatnot, that's when we talked about the
10 idea of doing something about that to stop it, because
11 it was just gaining and growing.

12 Q With regard to the -- one second.

13 With regard to the approved minutes that
14 were marked previously as Exhibit F --

15 A Yes.

16 Q -- is it true that those were posted on the
17 Laguna Lakes website at one point in time and then
18 removed from them?

19 A No.

20 Q Are they still on there today?

21 A To my knowledge, they are.

22 MR. MARINO: If I opened the website, can he
23 look?

24 MR. BEHREN: What's that?

25 MR. MARINO: If I opened the website, can he

1 look?

2 THE WITNESS: Go ahead.

3 MR. BEHREN: Pull it up and see.

4 BY MR. BEHREN:

5 Q Would you agree that -- and you would agree
6 that Mary Ann Cowart is a licensed Florida real estate
7 agent who lives in Laguna Lakes and was on the board,
8 right?

9 A Yes.

10 UNIDENTIFIED SPEAKER: Objection.

11 THE WITNESS: Sorry.

12 BY MR. BEHREN:

13 Q Is there a Laguna Lakes discussion board,
14 that there used to be at some point in time?

15 A Yes, there was.

16 Q Where was that? Was that on the website?

17 A That was on the website.

18 Q Are you aware of whether or not Ms. Cowart
19 was continuously criticizing Mr. Marino and posting
20 negative comments about him on the discussion board?

21 UNIDENTIFIED SPEAKER: Object.

22 But go ahead and answer, if you know,
23 Patrick.

24 THE WITNESS: I really don't know, but I do
25 know that it was taken down by a previous board,

1 and more or less it was -- the comments were --
2 and I don't know if it was Mary Ann or not, but
3 the comments were nasty, going back and forth
4 between the board and the residents.

5 BY MR. BEHREN:

6 Q And what about with regard to -- with regard
7 to these applications for the trademarks --

8 (Off-the-record discussion.)

9 MR. BEHREN: Well, that -- he's going to --
10 he's going to ask -- we're going to ask the
11 witness to take a look at the Laguna Lakes website
12 and see whether or not the minutes that I -- I
13 think were -- I just set forth were Exhibit H, are
14 actually still on the website. I'm sorry, not
15 Exhibit H, Exhibit F.

16 THE WITNESS: F.

17 MR. BEHREN: Sorry.

18 UNIDENTIFIED SPEAKER: Question?

19 THE WITNESS: So, you're asking me to go in
20 here, is --

21 MR. BEHREN: Yeah.

22 THE WITNESS: -- that what you --

23 MR. BEHREN: See if the minutes are still on
24 the website, or --

25 MR. ANNUNZIATA: Do you have --

1 MR. BEHREN: -- because you thought they --
2 you thought they were still on --

3 (Overlapping discussion.)

4 MR. ANNUNZIATA: -- passwords or anything of
5 yours --

6 THE WITNESS: No.

7 MR. ANNUNZIATA: -- on here?

8 MR. MARINO: He's --

9 THE WITNESS: He's logged in already.

10 MR. BEHREN: As long as he's already logged
11 in.

12 THE WITNESS: Yeah, he's logged in already.

13 MR. ANNUNZIATA: All right.

14 MR. BEHREN: All right.

15 MR. ANNUNZIATA: What was the -- what was
16 the date on this?

17 THE WITNESS: August --

18 MR. ANNUNZIATA: August --

19 THE WITNESS: -- 12th.

20 MR. ANNUNZIATA: -- 22nd, 2011.

21 THE WITNESS: '11, yeah.

22 MR. BEHREN: I'm sorry?

23 THE WITNESS: No, it's --

24 BY MR. BEHREN:

25 Q It's not on there?

1 A I'm not seeing -- I'm not seeing it. They
2 should all be on here. They were all on here.

3 Q Any idea why somebody would have removed
4 these particular minutes from the website?

5 A Well, it's not like they -- you're making it
6 something it's not.

7 There is -- every one was put on here from
8 the beginning of 2006, and right now I'm seeing there is
9 a lot missing, a lot.

10 And as I stated earlier, I don't go on this
11 very often, and --

12 Q But this one -- this particular meeting is
13 missing, correct?

14 A This and many, actually, yeah. All of '10
15 except for one, all of '11 except for one, all of --
16 well, one, two -- all of '12 except for two of them,
17 none of '09, none of '08. They were all on there. So,
18 exactly where that all has gone to, I don't know.

19 Q Would you --

20 A I would have to -- I would have to contact
21 who was effectively taking care of that website in order
22 to take it any further.

23 Q Would you agree, as the president of the
24 association, that you would have a fiduciary
25 responsibility to make sure that the members have access

1 to the minutes and know what was discussed at these
2 board member meetings?

3 A Yeah. They can call Alliant Property
4 Management at any time and get stuff.

5 Q Was there ever, in 2012, a board meeting
6 where members questioned the benefit of proceeding
7 forward with this trademark application?

8 A Could you repeat that question?

9 Q Was there ever a board meeting --

10 A Uh-huh.

11 Q -- where members of the association
12 questioned the benefit of proceeding forward with these
13 trademark applications?

14 A There was a couple of residents who
15 questioned, yeah.

16 Q Who was that? And tell me about that.

17 A I don't remember their names specifically.
18 I know his first name -- the one guy was Jeff, and I
19 can't remember the other woman's name.

20 But they asked -- they were members of a
21 Monterey parcel, of which they had a problem with Donna
22 being the representative. And that was their sole goal,
23 and that was it.

24 Q They had a problem with Donna being the
25 lawyer?

1 A Correct.

2 Q Okay. And what was discussed and what was
3 addressed about that issue?

4 A Well, the only thing that was discussed,
5 again, was the price, of which was stated the \$2,700,
6 and we stated that it was not -- it didn't come close to
7 doing that.

8 Q Did you tell them at the board how much --
9 at that board meeting where they complained about this
10 process, how much it was that had been spent to date?

11 A No.

12 Q Other than that it was in excess of the
13 \$2,700?

14 A It was less than, yes.

15 Q Oh, it was --

16 A It was less than.

17 Q Less than the \$2,700?

18 A Correct.

19 Q Was --

20 A We were in the very beginnings of actually
21 doing this when that, what you're talking about --

22 Q I got you.

23 A -- came in.

24 Q Do you recall at some point in time Mary Ann
25 Cowart standing up during one of those meetings when

1 they said why are we doing this, and her response was so
2 that Gerard Marino can't use it?

3 UNIDENTIFIED SPEAKER: Object.

4 THE WITNESS: No, I don't remember that
5 statement being said.

6 BY MR. BEHREN:

7 Q In the years that Mr. Marino has sold in
8 Laguna Lakes, has there been one complaint about his
9 selling of properties there, or has it in any way, any
10 of his -- in his years of selling there, has it somehow
11 affected the goodwill or name of the community?

12 A To my knowledge, I would have to say no, but
13 that's only my knowledge.

14 Q I understand.

15 A There's 614 units in there. There is a lot
16 of people that could say something different. Couldn't
17 tell you one way or the other.

18 Q Okay. We had asked you also to produce any
19 and all documents showing persons who had confusion,
20 suspicion, mistake, deception, or doubt as to the
21 relationship between -- between plaintiff and defendant
22 or plaintiff and defendant's products associated with
23 the mark Laguna Lakes. You don't have any documentation
24 to that effect, or do you? In other words --

25 MR. ANNUNZIATA: What --

1 BY MR. BEHREN:

2 Q Is there any documentation from anybody
3 expressing some confusion about the affiliation of
4 Mr. Marino with Laguna Lakes?

5 A I don't believe there is.

6 Q So, that would be request number 11 of the
7 request for production. You're saying there's no
8 responsive documents?

9 In addition, we had asked for all annual
10 sales figures of each product sold or distributed by you
11 in connection with the mark Laguna Lakes, or otherwise
12 sold or distributed by you under the mark Laguna Lakes
13 since January 2006. Do you have any documents to --
14 that would be responsive to that request?

15 A We didn't sell anything.

16 Q Okay. So, then, the answer to -- that was
17 request for production number 15. Would the response
18 then be that you have no responsive documents?

19 A I would imagine.

20 Q We also asked for all documents tending to
21 show any likelihood of confusion between Mr. Marino's
22 use of the name Mr. Laguna Lakes and your proposed use
23 of the mark Laguna Lakes. I think you already testified
24 there wouldn't be any documents to evidence that one way
25 or the other, correct?

1 A No.

2 Q So -- so, the response to number 16 should
3 be no responsive documents; would that be a fair
4 statement?

5 A Sure.

6 Q Number 20, I asked for all documents showing
7 the annual advertising and commercial expenditures for
8 you for each product sold under the name Laguna Lakes,
9 or in connection with the trademark Laguna Lakes. It
10 says that responsive documents will be produced. Are
11 there any responsive documents?

12 A No.

13 Q So, the response to number 20 should be
14 none?

15 A (Witness shrugging shoulders.) No. It's
16 to --

17 MR. ANNUNZIATA: You need to review what
18 was -- what was already --

19 THE WITNESS: Well, every question so far
20 that he's asking me about is somehow connected to
21 the idea that we sell something --

22 MR. ANNUNZIATA: All right.

23 THE WITNESS: -- so no.

24 BY MR. BEHREN:

25 Q Which you don't?

1 A No. So, what's your point?

2 Q Well, the point is, is that I don't know
3 whether -- did you -- here, let me mark this as -- we
4 are exhibit -- up to -- what are we up to?

5 A I.

6 MR. BEHREN: What was -- the brochure --

7 MR. ANNUNZIATA: J.

8 MR. BEHREN: -- I think was J, right?

9 THE WITNESS: J, yeah.

10 MR. ANNUNZIATA: K.

11 MR. BEHREN: So, Exhibit K --

12 THE WITNESS: Okay.

13 MR. BEHREN: -- is going to be your
14 responses to request for admissions,
15 interrogatories and requests for production.

16 (Deposition Exhibit K was marked for
17 identification.)

18 UNIDENTIFIED SPEAKER: What's -- what's this
19 new document?

20 MR. ANNUNZIATA: It's the -- it's the
21 objections -- applicant's objections and responses
22 to John Gerard Marino's first set of requests for
23 admissions, interrogatories, and request for
24 production, so it's the objections.

25 MR. BEHREN: Hold on one second. You can

1 take a look at that. My client wants to speak to
2 me for a second.

3 MR. ANNUNZIATA: They have stepped out for a
4 conference, Scott and Mr. Marino.

5 (A brief recess was taken.)

6 BY MR. BEHREN:

7 Q One other quick question before I forget.
8 Who is Vicki Rose?

9 A She's a --

10 UNIDENTIFIED SPEAKER: Are we on --

11 UNIDENTIFIED SPEAKER: Is that on the
12 record?

13 MR. BEHREN: We are on the record.

14 MR. ANNUNZIATA: We are back on the record.

15 UNIDENTIFIED SPEAKER: Okay. Sorry. I
16 just -- we just are having a hard time keeping
17 track.

18 MR. ANNUNZIATA: No, no, sorry about that.
19 We should have told you when everybody was back
20 in.

21 BY MR. BEHREN:

22 Q Who is Vicki Rose?

23 A She's a resident.

24 Q What knowledge does she have with regard to
25 the issues in this matter?

1 A Well, she -- I would imagine -- she is
2 someone who has lived there from the very beginning, so
3 she probably knows a lot of stuff; but what exact
4 knowledge she has, I have no idea.

5 Q So, you -- you don't know what she knows?
6 What about Jonathan Busa, who's that?

7 A He's a resident that lives in Laguna Lakes.
8 MR. ANNUNZIATA: What are you reading from?

9 BY MR. BEHREN:

10 Q What knowledge does he have?

11 MR. ANNUNZIATA: Are you reading from
12 answers?

13 UNIDENTIFIED SPEAKER: Objection.

14 MR. BEHREN: Not right now.

15 THE WITNESS: He was there from the very
16 beginning.

17 BY MR. BEHREN:

18 Q Okay. But do you have any -- you have no
19 knowledge as to what knowledge he --

20 A Specific --

21 (Off-the-record discussion.)

22 BY MR. BEHREN:

23 Q You don't have any knowledge?

24 A Specifically what he knows, no. I can't
25 speak for someone else.

1 Q And with regard to what I have marked as
2 Exhibit K, which are the objections and responses to
3 interrogatories, requests for admission, request for
4 production, you would agree at the end -- the second to
5 last page of that document there is your signature,
6 correct, as president of the LLCA Board of Directors --

7 A Yes, it is.

8 Q -- January 25th, 2013, right?

9 A That is my signature, yes.

10 Q So, that's the reason why I'm asking you
11 about -- such as number 41. It says, all documents
12 evidencing your use of Laguna Lakes and interstate
13 commerce since 2006. You would agree that, other than
14 residents potentially maybe buying units and moving from
15 out of state into Florida, that Laguna Lakes is not
16 engaged in interstate commerce, is it?

17 UNIDENTIFIED SPEAKER: Objection. The
18 verification relates to --

19 MR. BEHREN: Do not -- do not make speaking
20 objections, please.

21 UNIDENTIFIED SPEAKER: The document
22 production is not something that this witness
23 verified.

24 MR. BEHREN: Well, actually, he -- this
25 corporate representative was noticed as the person

1 with the most knowledge of the documents produced
2 responsive to the request for production, the
3 answers to the requests for admissions, and the
4 answers to the interrogatories.

5 BY MR. BEHREN:

6 Q So, my question is -- I asked for now in
7 paragraph -- in request for production number 41, I
8 asked for documents evidencing your use of Laguna Lakes
9 and interstate commerce since 2006.

10 UNIDENTIFIED SPEAKER: The objection stands,
11 but --

12 MR. BEHREN: Okay.

13 UNIDENTIFIED SPEAKER: -- Patrick, you can
14 answer, if you know.

15 THE WITNESS: All right. So number 41, all
16 documents, interstate commerce --

17 BY MR. BEHREN:

18 Q Other the website, you have none, correct?

19 A We -- yeah, the website, and -- I would say
20 the website and dealing with our residents in and out of
21 the state and the country.

22 Q Okay. But there is no documents relating to
23 dealing with residents in and out of the state and the
24 country, right?

25 A Well, I would imagine there's got to be a

1 way to pull stuff off the website that there's been
2 interactions, and I'm certain that we could pull phone
3 records, if necessary.

4 Q Okay. But the fact that the people -- that
5 people may buy units in Laguna Lakes from out of the
6 state or out of the country --

7 A Uh-huh.

8 Q -- doesn't mean that the association is
9 involved in interstate commerce, because the association
10 is not selling properties, correct?

11 A That's correct.

12 UNIDENTIFIED SPEAKER: Objection.

13 Go ahead, Patrick.

14 THE WITNESS: That is correct.

15 BY MR. BEHREN:

16 Q I also asked for all board of director's
17 meeting minutes for the LLCA since 2006, in request
18 number 40, and the only one I got was the one that I
19 asked you about before, which was Exhibit H. H? I keep
20 forgetting the exhibit letters.

21 A Hang on.

22 F.

23 Q F, that's the only one I got. So, you would
24 agree that there are a vast number of additional minute
25 meetings -- meetings of minutes that would have been

1 responsive to that request that were not produced,
2 correct?

3 UNIDENTIFIED SPEAKER: Objection.

4 BY MR. BEHREN:

5 Q Would that be correct?

6 UNIDENTIFIED SPEAKER: Go ahead, Patrick, if
7 you -- if you have any idea.

8 THE WITNESS: I need a better understanding
9 of --

10 MR. ANNUNZIATA: What --

11 THE WITNESS: -- that particular question.

12 MR. ANNUNZIATA: -- what number?

13 BY MR. BEHREN:

14 Q Request number 40. All board of director
15 meeting minutes for LLCA since 2006. You said you meet
16 at lease once a month, thereabouts?

17 A Thereabouts.

18 Q Okay. So, you would agree that since 2006,
19 there would be more than this one board of director's
20 meeting minutes --

21 A Yes.

22 Q -- marked as Exhibit F?

23 A I would agree that there would be more
24 meetings.

25 Q And any idea why they weren't produced to

1 me?

2 A No, I have no idea. It's not as --
3 something that I would know.

4 Q And 37, the request was all documents
5 evidencing annual sales and advertising figures for your
6 Laguna Lakes product since January 1, 2006. It says
7 you -- the response was you will produce non-privileged
8 documents. There -- there would not be any documents,
9 would there?

10 A I don't believe there would be.

11 Q Because, again, you all are not selling
12 anything?

13 A Right.

14 Q Do you do any advertising at all?

15 A Nope.

16 Q So, you also wouldn't have any documents
17 evidencing advertising expenditures, correct?

18 A That's correct.

19 Q So, once -- so, in 37, the response, I
20 guess, should be that you have no responsive documents?
21 Would that be correct?

22 UNIDENTIFIED SPEAKER: Objection.

23 MR. ANNUNZIATA: Objection.

24 UNIDENTIFIED SPEAKER: Patrick, to your
25 knowledge, go ahead.

1 THE WITNESS: I guess to my knowledge, that
2 would be correct. I have, you know --

3 BY MR. BEHREN:

4 Q So, also number 30, where we asked for
5 all -- any -- all agreements with any person who
6 develop, create, use, advertise, market, promote, or
7 sell products associated with Laguna Lakes, it says it
8 will produce all responsive documents. The -- I'm
9 assuming the response also there should be that there
10 are none?

11 UNIDENTIFIED SPEAKER: Objection.

12 If you -- but if you know, Patrick --

13 THE WITNESS: I -- I would say that there
14 are no documents.

15 BY MR. BEHREN:

16 Q With regard to 27, where I asked for all
17 documents pertaining to the creation, selection,
18 searching, adoption, earliest use, and decision to use
19 the Laguna Lakes mark, including correspondence with
20 design firms, advertising firms, advertising media, U.S.
21 and state governmental agencies, and intracompany
22 memoranda, the response was that we'll produce all
23 responsive non-privileged documents. Are there such
24 documents --

25 MR. HARDERS: Objection.

1 BY MR. BEHREN:

2 Q -- because I haven't gotten any yet?

3 MR. ANNUNZIATA: Did you object, Scott?

4 MR. HARDERS: Yes.

5 MR. ANNUNZIATA: Yeah.

6 And also, just for the record, there are
7 objections that are raised. Those objections are
8 not waived for the record, they were reiterated.

9 BY MR. BEHREN:

10 Q Again, sir, the question is, with -- it
11 would be a fair statement that Laguna Lakes did not --
12 these community associations did not select, or adopt,
13 or design the logo, or the name, or any of these
14 specimens that it's applying for trademarks on, did it?

15 A No.

16 UNIDENTIFIED SPEAKER: Objection.

17 But, to the extent that you know, Patrick --

18 THE WITNESS: To the extent that I know,
19 that no, they did not create it.

20 MR. BEHREN: Okay. So --

21 THE WITNESS: It came along with the
22 property.

23 BY MR. BEHREN:

24 Q So, you don't have any documents then to
25 show the creation, selection, searching, adoption, or

1 earliest use and decision to use the Laguna Lakes mark,
2 correct?

3 A I do not have that knowledge.

4 Q So, the response you believe to Exhibit 2,
5 request number 27, should also be no responsive
6 documents?

7 UNIDENTIFIED SPEAKER: Objection.

8 BY MR. BEHREN:

9 Q Would that be a fair statement, sir?

10 MR. ANNUNZIATA: Iterate all the objections
11 to each and every question that's been asked with
12 regard to each and every document, for the record.

13 THE WITNESS: You know, I -- I really -- to
14 my knowledge, I would say that we had, you know --
15 all of that came along with the property, so the
16 association itself probably did not pick any of
17 that out.

18 MR. BEHREN: Okay. Hold on one second.

19 (A brief recess was taken.)

20 BY MR. BEHREN:

21 Q All right. So, with regard to -- once the
22 Transeastern Laguna Lakes entity deeded the common areas
23 to Laguna Lakes Community Association, Inc., and we said
24 that was, I guess, in 2003, correct?

25 A Correct.

1 Q You would agree that from 2003 until
2 approximately 2006, Transeastern continued to market and
3 sell new homes in the Laguna Lakes development, using
4 the --

5 UNIDENTIFIED SPEAKER: Objection.

6 Q -- name and the logo, correct?

7 UNIDENTIFIED SPEAKER: Still objection.

8 But go ahead and answer, Patrick.

9 THE WITNESS: Yes. They had their marketing
10 all set up and they continued to use it.

11 BY MR. BEHREN:

12 Q So, they were the first users of the name
13 and logo, correct?

14 A They were also the first board members.

15 Q They were the owners --

16 A And the board members --

17 Q -- of the -- let me --

18 A Of the association.

19 Q Right.

20 They were the owners of the name and logo,
21 correct?

22 A Yeah.

23 Q Okay. So, the question is, where is there
24 documentation where they transferred ownership of the
25 name and logo to the Laguna Lakes Community Association?

1 A I couldn't tell you.

2 Q There isn't any, is there?

3 A I have no knowledge of anything like that.

4 Q Okay. Because, in fact, as you guys took
5 over, Transeastern continued to sell and market,
6 utilizing the name and the logo, right?

7 UNIDENTIFIED SPEAKER: Objection.

8 THE WITNESS: Right.

9 BY MR. BEHREN:

10 Q And they continued to own the domain name
11 and the website for Laguna Lakes, correct?

12 UNIDENTIFIED SPEAKER: Objection.

13 If you know, Patrick, it's okay.

14 THE WITNESS: I -- I don't know that they
15 ever owned the domain name, I don't know.

16 BY MR. BEHREN:

17 Q LagunaLakes.com?

18 A Right.

19 Q You don't know that?

20 A No.

21 Q Okay. Do you know whether or not then
22 Laguna Lakes -- whether or not Transeastern, when they
23 were merged with TOUSA, whether or not then they
24 transferred the domain name and the ownership of these
25 logos and names to TOUSA? Do you know that?

1 UNIDENTIFIED SPEAKER: Objection.

2 THE WITNESS: (Witness shrugging shoulders.)

3 BY MR. BEHREN:

4 Q You have no knowledge of that?

5 A I have no knowledge of that.

6 Q And it's your testimony the only reason why
7 the board of directors decided to file for these
8 trademarks was to protect the development from some
9 possible future contingency that might happen based upon
10 the conduct of Mr. Marino, correct?

11 A No, that is not what I said. I said
12 Mr. Marino and any other entity, business, or person
13 that would use the name and logo together to represent
14 themselves for the association, not being the
15 association. That's what I said.

16 Q You would agree that, to date, there is not
17 a single -- you have -- there -- you have no personal
18 knowledge of a single complaint about confusion between
19 Mr. Marino and the Laguna Lakes Community Association?

20 A No.

21 UNIDENTIFIED SPEAKER: Objection.

22 But you can answer, Patrick.

23 THE WITNESS: Not to me, no.

24 BY MR. BEHREN:

25 Q And, again, you don't -- and when --

1 although the -- although there was a transfer of the
2 Transeastern Laguna Lakes, LLC entity common areas to
3 the Laguna Lakes Community Association back in 2003, you
4 don't know specifically when these monument signs were
5 put up to the front of the development, correct?

6 A Specifically, no.

7 Q By the way, you -- so, you testified to --
8 about Mr. Marino using the LagunaLakes.com domain,
9 correct?

10 A I testified that he was using it?

11 Q Yeah, didn't you? I thought you said a
12 combination of him using the domain name and --

13 A Not the domain --

14 Q -- the logo was confusing.

15 A I never said the domain name.

16 Q Okay. So --

17 A I never said that.

18 Q All right. When you --

19 A What I said is, in the advertising, when
20 you're splashing the logo and the name Laguna Lakes
21 together and it comes across as if it's the association,
22 is where we have the problem.

23 Q Okay. So, it would be -- it would be a fair
24 statement then that if Mr. Marino has been using the
25 domain name LagunaLakes.com, that, to your knowledge,

1 there has been no complaints about anybody going onto
2 that website and being confused between Mr. Marino and
3 the association?

4 A There actually was one complaint, the
5 clubhouse manager, who he -- who told her he was going
6 to put her on there, and she declined.

7 Q He told who he was going to put who on
8 where?

9 A Mr. Marino told the clubhouse manager for
10 Laguna Lakes that he was going to put her on the
11 website, and she declined.

12 Q Okay. Who was that?

13 A Vanessa Metzger, the clubhouse manager.

14 Q Okay.

15 A Yes. She works --

16 Q So, he was trying to offer to put her on
17 there as a service, I guess, to the community, but she
18 didn't --

19 A No.

20 Q -- want to do it?

21 A It wasn't a service to the community, it's a
22 service to him.

23 Q Why?

24 A What do you mean why?

25 Q How is it a service to him to have the

1 clubhouse manager on the website, when he's trying to
2 sell real estate?

3 A Who -- how is that helping her out?

4 Q I said as a service to the community.

5 A Yeah, but how does that help her out? How
6 does that help the community out?

7 Q Because if --

8 A We already had -- because we -- see, when
9 you start to blur the line between Laguna Lakes
10 Community Association and Mr. Marino's business, then
11 that's a problem, and --

12 Q And what did he --

13 A -- that's exact --

14 Q What did he want the clubhouse manager on
15 the website for?

16 A I have no idea.

17 UNIDENTIFIED SPEAKER: Objection. How could
18 he know?

19 MR. BEHREN: Well, he -- it sounds like he
20 had a discussion with her about it.

21 THE WITNESS: I have no idea why he would
22 want her.

23 BY MR. BEHREN:

24 Q Okay. Did you ever discuss -- what did she
25 tell you about why it --

1 A She told me --

2 Q -- was that he wanted her on there?

3 A -- that he was -- he wanted to put her on
4 there. And I -- and I said, and? And she said, I
5 declined. That was the discussion.

6 Q Okay. So, there was never any information
7 about why it was he wanted to put her on there?

8 A No.

9 Q And you would agree, though, that, in all
10 likelihood, him listing a clubhouse manager on a site
11 that's used to sell real estate, it's not going to help
12 him sell real estate, right?

13 MR. ANNUNZIATA: Objection.

14 UNIDENTIFIED SPEAKER: Objection.

15 MR. ANNUNZIATA: Speculation.

16 BY MR. BEHREN:

17 Q Would you agree with that?

18 A No, I don't agree.

19 Q How do you think that listing the clubhouse
20 manager is going to help him sell real estate?

21 A You're asking me to --

22 MR. ANNUNZIATA: Objection.

23 A -- speculate. How -- you know, what I'm
24 telling you is, is that it's not going to help her
25 perform her job. She's being paid to do a job from

1 Alliant Property Management.

2 Q How would it hurt the community to have
3 Mr. -- to have this clubhouse manager on the website by
4 Mr. Marino?

5 UNIDENTIFIED SPEAKER: Objection.

6 THE WITNESS: How would it help?

7 BY MR. BEHREN:

8 Q If he wanted to put association contacts on
9 there, so that people would be able to communicate with
10 people within Laguna Lakes if they wanted to, how does
11 that hurt the association?

12 A He would have to contact the people in there
13 to have that question answered.

14 MR. BEHREN: All right. I don't have
15 anything further for him.

16 MR. ANNUNZIATA: We will -- we are going to
17 read, right, Scott?

18 MR. HARDERS: Yeah, we are going to read.
19 And a half hour for lunch?

20 (Deposition concluded.)

21

22

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RE: Marino vs. Laguna Lakes

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Under the penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.


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CERTIFICATE OF OATH

I, Marianne E. Sayers, RPR, CRR, Notary Public,
State of Florida at Large, certify that the witness
PATRICK TARDIFF personally appeared before me on August
23, 2013 and was/were duly sworn.

(This certificate has been digitally signed.)



Marianne E. Sayers, RPR, CRR,
Notary Public, State of Florida
Commission DD942088
Commission Expires 1/19/2014

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEE)

I, Marianne E. Sayers, RPR, CRR, do hereby certify that I was authorized to and did stenographically report the deposition of PATRICK TARDIFF; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 9th day of September, 2013.

(This certificate has been digitally signed.)


Marianne E. Sayers, RPR, CRR

UNITED STATES PATENT AND TRADEMARK
OFFICE-Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposition No: 91204897
Opposition No: 91204941

JOHN G. MARINO

vs.

LAGUNA LAKES COMMUNITY
ASSOCIATION, INC.

RE-NOTICE OF TAKING DEPOSITIONS

PLEASE TAKE NOTICE that the undersigned will take the deposition of:

<u>Name</u>	<u>Date</u>	<u>Time</u>
Corporate Rep of Laguna Lakes Community Association, Inc. With the Most Knowledge of all Complaints Answers, and Affirmative Defenses and all issues on the Attached Exhibit "A"	August 23, 2013	10:00 a.m.
Patrick Tardiff		1:00 p.m.
Jeff Kelly		2:00 p.m.
Mary Ann Cowart		3:00 p.m.
Bob Hajicek		4:00 p.m.



upon oral examination before an officer qualified to administer oaths at the offices of Von Ahn Associates Court Reporting, 13241 University Drive, Suite 104, Ft. Myers, FL 33907 for the above-styled cause. The deposition shall be conducted pursuant to local rules and shall continue day to day, weekends and holidays excepted, until completed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was e-mailed this 16 day of August 2013 to: Chad Rothschild, Esq. and Donna Flammig, Esq., Brennan, Manna & Diamond, LLC, 75 East Market St. | Akron, OH 44308.

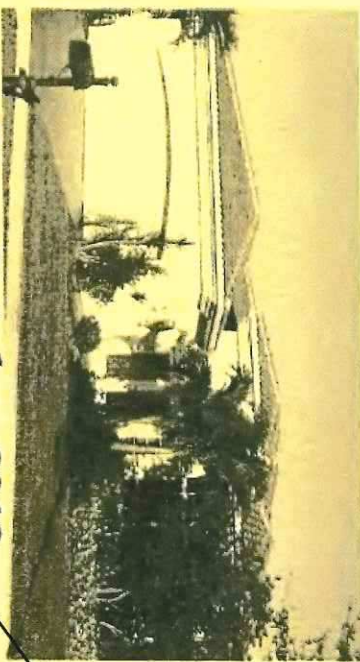
Behren Law Firm
2893 Executive Park Drive, Suite 110
Weston, FL 33331
(954) 636-3802
(772) 252-3365 - fax
scott@behrenlaw.com

By: / Scott M. Behren/
Scott M. Behren
Fla. Bar No. 987786

Exhibit "A"

1. The first use of the marks applied for with the USPTO.
2. The information contained on the application to the USPTO.
3. The use of the sought trademark in interstate commerce.
4. The reason for seeking the marks.
5. Marino's use of the marks or name Laguna Lakes or Mr. Laguna Lakes.
6. Whether any transfer of the marks was ever made by Transeastern Homes or any TOUSA entity.
7. Any likelihood of confusion between the marks of Laguna and Marino.
8. Whether the sought marks is geographically descriptive.
9. The use of the sought marks by other entities in the U.S.
10. Any profits earned by Laguna by the use of the sought marks.
11. Person with the most knowledge of documents responsive to the Request for Production.
12. Person with most knowledge of the answers to interrogatories.
13. Person with the most knowledge of responses to Request for Admissions.

Another REALTOR promoting Laguna Lakes



Free October 2012 Report On Laguna Lakes Home Prices

If you're curious about what your Laguna Lakes home may be worth, here's an easy way to find out what homes like yours are selling for in today's market.

Plus: Get a free report with up-to-the-minute statistics based on all the homes for sale and sold in Laguna Lakes over the last six months in all price ranges. To get your free report on Laguna Lakes home prices, just call **888-897-5893, ext. 20** for a 24-hour free recorded message, or go to www.LagunaLakesHomeReport.com.

Reports provided by Brett Crume, REALTOR, e-PRO
RE/MAX Realty Group 239-210-4580.
Not intended to solicit properties already listed for sale.

RE/MAX

RE/MAX Realty Group
7910 Summerlin Lakes Dr
Fort Myers FL 33907

L.L.
JOHN MARINO
or Current Resident
9069 PASO DE VALENCIA ST
FORT MYERS FL 33908-9662

Postnet Std
US Postage
PAID
Fort Myers, FL
Permit 503



When it comes to real estate in **Laguna Lakes**, who you choose matters.

PSRST STD
ECRWSS
U.S. POSTAGE
PAID
EDDM RETAIL

LOCAL
POSTAL
CUSTOMER

Are you or a friend considering buying or selling a home in **Laguna Lakes**? If you are, now is the perfect time to consult a Real Estate Professional who can achieve the results you deserve.

There is only one person who can achieve this goal with you: Kris Asquith. With this top producing Southwest Florida Real Estate Professional, you will get more...

- Local market and community real estate knowledge
- Access to cutting-edge marketing tools and resources
- Personalized attention to your specific lifestyle needs and financial goals
- Everything you need to get your **Laguna Lakes home** or condo sold and/or find the home of your dreams!

No other Real Estate Professional in Southwest Florida can come close to the level of service and experience you will find with Kris Asquith.



KRIS ASQUITH YOUR NEIGHBOR AND YOUR NEIGHBORHOOD EXPERT



Real Estate Expert
(239) 300-1427

Kris@FindParadiseWithKris.com
www.FindParadiseWithKris.com

KRIS ASQUITH only utilizes the most effective and proven marketing tools available to get your home maximum exposure... *with no cost to you!* If you're buying or selling, her tools can educate you about every community and neighborhood in Southwest Florida.

Whether you're a buyer or seller in **Laguna Lakes**, you will benefit from:

- **Monthly Market Reports.** The most accurate data about Laguna Lakes including closed and active home sales. Visit www.LagunaLakesRealEstateListings.com to view current market data.
- **Elite Seller Feedback System.** My sophisticated and exclusive system that provides valuable feedback from your showings via email, so you know what buyers are thinking.
- **Interactive Home Illustration.** Give buyers what they want to see with an interactive floor plan.

Superior Marketing Plan. My marketing plan is unlike all others in the Southwest Florida market! It will maximize exposure and get you top dollar for your home or condo.

I invite you to visit my website, www.FindParadiseWithKris.com, to see what my clients say and learn why I am one of the top producing real estate professionals in Southwest Florida.

Remember...when it comes to real estate in **Laguna Lakes**, who you choose matters.

To learn more about selling your home or condo in **Laguna Lakes** or finding the home of your dreams, contact your neighbor and your neighborhood expert, Kris Asquith today.

KRIS ASQUITH (239) 300-1427

24851 S. Tamiami Trl, Ste. #1, Bonita Springs, FL 34134

Kris@FindParadiseWithKris.com
www.FindParadiseWithKris.com



PENGAD 800-631-6989

EXHIBIT

D
Tardiff

8-2343

LAGUNA LAKES

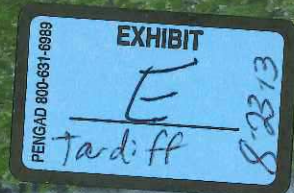
5 Bed / 3 Car Garage
Pool and Lake View

\$319,940

Jason Schroeder

Novelli Int.

239-823-9090





Community Association Inc.

Board of Director's Meeting Minutes

Held on **August 22nd, 2011** at 7:00pm at the Laguna Lakes Clubhouse,
Located at 15300 Lakes of Laguna Boulevard, Fort Myers Florida, 33908

Approved Minutes

Present: President, Patrick Tardiff; Vice-President, Donna Flammang (by phone);
Treasurer, Bob Hajicek, Secretary, Jeff Kelley; Director, Mary Ann Cowart

Management Company: Patrick McGuire, CAM – Alliant Association Management (absent)
Kim Hertner, CAM – Alliant Association Management was present.

Chairperson of Meeting: President, Patrick Tardiff.

- 1) **Establish a Quorum/Call to Order:** A quorum was established and the meeting was called to order at 7:03 by Patrick Tardiff.
- 2) **Proof of Notice:** Notice was posted on August 15th on the website and on August 19th on the bulletin board.
- 3) **Disposal of Unapproved Minutes:** – Previous minutes will be approved at the next meeting.
- 4) **Treasurer's Report:**

i) Cash Operating	\$458,872.00
ii) Cash Reserves	\$179,490.00
iii) Cash Total	\$638,362.00
iv) Operating Actual YTD Expenses	\$707,423.00
v) Operating Budget YTD Expenses	\$725,001.00

5) **Committee Reports:**

- a) **Social Committee** – No report given
- b) **Landscaping Committee** –
 - i) **Items Completed**
 - (1) Ficus hedge was completed.
 - (2) Washingtonian palms were trimmed.
 - (3) Oak trees on Laguna Lakes parkways will be completed on Monday.
 - ii) **Proposals**
 - (1) Removal of 5 Hong Kong Orchids, Silver Buttonwoods, Green Island Ficus and Core Grass around the edge of the roundabout. Install sod. Everyday Maintenance proposal \$2,125.00
 - (2) Renovate 5 sprinkler zones on the roundabout. Irrigation Specialist proposal \$2,084.00.



Visit us at

www.lagunalakesassociation.com

*This agenda was prepared by Alliant Association Management;
6719 Winkler Road Suite 200, Fort Myers Florida, 33919,
In accordance with Florida Statutes.
Cc: BOD; LLCA File*

- (3) Sylvester Palm on the roundabout needs to be straightened. Gulf Coast Palm proposal \$275.00.
- (4) Total cost for the roundabout \$4,484.00.

MOTION: A motion was made by Donna Flammang to accept the proposal from Everyday Maintenance for \$2,125.00 for removal of 5 Hong Kong Orchids, Silver Buttonwoods, Green Island Ficus and Core Grass around the edge of the roundabout and install sod. And also accept the proposal from Irrigation Specialist to renovate 5 sprinkler zones on the roundabout for a cost of \$2,084.00. Seconded by Bob Hajicek. All in favor, motion passes.

c) Club House Committee –

- i) Billiard bar stools have been recovered.
- ii) Umbrellas were replaced in the pool area.
- iii) Water fountain is leaking for the fourth time this year.
- iv) Need to replace the two nets and poles at the tennis courts.
- v) Tarp cover on the gazebo is shredded.
- vi) Racket ball court needs either repairing or a member vote to change the use status.
 - (1) Proposals from Mark Wardell at Ritzman Tennis
 - (a) Net posts \$350.00
 - (b) Nets two at \$183.00 each
 - (c) Gazebo cover \$750.00
 - (d) Windscreens \$1,500.00 plus tax to do all around both courts
 - (e) Clay \$350.00

MOTION: A motion was made by Bob Hajicek to proceed with the net posts at \$350.00, new nets at \$183.00 each, Gazebo cover at \$750.00, clay at about \$350.00 and to replace the fountain. Seconded by Donna Flammang. All in favor, motion passes.

6) Old Business:

- a) **LLCA Vote Meeting** – Amendment changes prepared by the Association Attorney were reviewed by the Board.

MOTION: A motion was made by Mary Ann Cowart to recommend to the members to pass the amendment change. Seconded by Patrick Tardiff. All in favor, motion passes.

Members meeting will be held on October 4, 2011 at 7:00 in the Clubhouse.

- b) **TEM Update** – Security measures at the clubhouse have been progressing along but not yet completed.
- c) **Comcast Contract** – Contract was signed on Tuesday, August 16, 2011. Contract effective date is October 1, 2011. Letter will be mailed to the residents soon.
- d) **Oak Tree Trimming Update** – Discussed previously in the meeting.

7) New Business:

- a) **Chairs for Pool Deck** – 15 chairs are needed to replace the missing chairs.

MOTION: A motion was made by Jeff Kelly to purchase 16 chairs from Leaders to replace the missing chairs. Seconded by Donna Flammang. All in favor, motion passes.

b) Clean up Wall in Club House -

MOTION: A motion was made by Bob Hajicek to remove the "entertainment center" from the wall of the clubhouse as per the Elias Brothers proposal and cost, refurbish the wall and purchase a big screen TV and electronics needed not to exceed \$4,500.00. Seconded by Mary Ann Cowart. All in favor, motion passes.

Visit us at

www.lagunalakesassociation.com

*This agenda was prepared by Alliant Association Management;
6719 Winkler Road Suite 200, Fort Myers Florida, 33919,
In accordance with Florida Statutes.
Cc: BOD; LLCA File*

- c) **BBQ Deck** – No discussion
- d) **Replace TV** – No discussion
- e) **Trademark** – Laguna Lakes Logo is not a registered trademark and is being used without the permission of the Board of Directors.

MOTION: A motion was made by Mary Ann Cowart to register the Laguna Lakes name and logo as a trademark at a cost of around \$2,700.00. Seconded by Bob Hajicek.
All in favor, motion passes.

8) **Other Business:**

- a) **Next meeting** – September 26, 2011

9) **Homeowners Comments** (up to 3 minutes each, time permitting):

Question: Due to the Comcast contract changes when will the homeowners see their \$500.00?

Answer: This will be decided on and discussed at the Budget Meeting.

10) **Adjournment:**

MOTION: A motion was made by Mary Ann Cowart to adjourn the meeting at 9:08 pm.
Seconded by Donna Flammang. All in favor, motion passes.

The next meeting will be held on September 26th, 2011 at 7pm.

Respectfully Submitted by
Kim Hertner, CAM
Patrick K. McGuire, CAM
Alliant Association Management

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

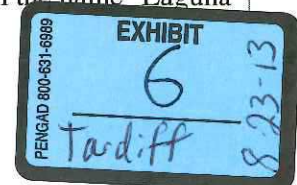
Serial Number: 85414343

Filing Date: 09/02/2011

NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	<u>\\TICRS\EXPORT1\IMAGEOUT</u> <u>1\854143\85414343\xml\FTK0002.JPG</u>
*SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	A setting sun over water with varieted long and short rays over the sun, imposed within two curved designs forming the letter "L" with 3 uneven squares above the design, and with the name "Laguna Lakes" starting on the outer right side border of the sunset design with a large script capital L and the remaining letters "aguna" in lower case script and the word "LAKES" beneath it in all in capital letters with bullet points between each letter to appears as "L?A?K?E?S"
*COLOR MARK	NO
*COLOR(S) CLAIMED (If applicable)	
	The mark consists of A setting sun over water with varieted long and short rays over the sun, imposed within two curved designs forming the letter "L" with 3 uneven squares above the design, and with the name "Laguna



*DESCRIPTION OF THE MARK (and Color Location, if applicable)	Lakes" starting on the outer right side border of the sunset design with a large script capital L and the remaining letters "aguna" in lower case script and the word "LAKES" beneath it in all in capital letters with bullet points between each letter to appears as "L·A·K·E·S".
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	776 x 600
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Laguna Lakes Community Association, Inc.
INTERNAL ADDRESS	c/o Alliant Property Management, LLC
*STREET	6719 Winkler Road, Suite 200
*CITY	Fort Myers
*STATE (Required for U.S. applicants)	Florida
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	33919
PHONE	239-454-1101
EMAIL ADDRESS	trademarks@bmdllc.com
WEBSITE ADDRESS	www.lagunalakesassociation.com
LEGAL ENTITY INFORMATION	
*TYPE	CORPORATION
* STATE/COUNTRY OF INCORPORATION	Florida
GOODS AND/OR SERVICES AND BASIS INFORMATION	
* INTERNATIONAL CLASS	035
IDENTIFICATION	Association services, namely, promoting the interests of condominium association and homeowner associations, managing the business affairs of the common community association of the HOAs and condominium association comprising the Laguna Lakes Community and promoting the use of and managing the maintenance of the real estate and improvements thereon owned by the community association.

*FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/06/2003
FIRST USE IN COMMERCE DATE	At least as early as 10/06/2003
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT1\IMAGEOUT 11\854\143\85414343\xml1\ FTK0003.JPG
SPECIMEN DESCRIPTION	Webpage of Laguna Lakes Community Association, Inc.
ADDITIONAL STATEMENTS SECTION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
ATTORNEY INFORMATION	
NAME	Donna M. Flammang
FIRM NAME	Brennan, Manna & Diamond, P.L.
STREET	3301 Bonita Beach Road, Suite 100
CITY	Bonita Springs
STATE	Florida
COUNTRY	United States
ZIP/POSTAL CODE	34134
PHONE	239-992-6578
FAX	239-992-9328
EMAIL ADDRESS	dmflammang@bmdpl.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
*NAME	Donna M. Flammang
FIRM NAME	Brennan, Manna & Diamond, P.L.
*STREET	3301 Bonita Beach Road, Suite 100

*CITY	Bonita Springs
*STATE (Required for U.S. applicants)	Florida
*COUNTRY	United States
*ZIP/POSTAL CODE	34134
PHONE	239-992-6578
FAX	239-992-9328
*EMAIL ADDRESS	dmflammang@bmdpl.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
* SIGNATURE	/Donna M. Flammang/
* SIGNATORY'S NAME	Donna M. Flammang
* SIGNATORY'S POSITION	Attorney of Record, Florida Bar
* DATE SIGNED	09/02/2011

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85414343

Filing Date: 09/02/2011

To the Commissioner for Trademarks:

MARK: A setting sun over water with varieted long and short rays over the sun, imposed within two curved designs forming the letter "L" with 3 uneven squares above the design, and with the name "Laguna Lakes" starting on the outer right side border of the sunset design with a large script capital L and the remaining letters "aguna" in lower case script and the word "LAKES" beneath it in all in capital letters with bullet points between each letter to appears as "L?A?K?E?S" (stylized and/or with design, see [mark](#))

The literal element of the mark consists of A setting sun over water with varieted long and short rays over the sun, imposed within two curved designs forming the letter "L" with 3 uneven squares above the design, and with the name "Laguna Lakes" starting on the outer right side border of the sunset design with a large script capital L and the remaining letters "aguna" in lower case script and the word "LAKES" beneath it in all in capital letters with bullet points between each letter to appears as "L?A?K?E?S".

The applicant is not claiming color as a feature of the mark. The mark consists of A setting sun over water with varieted long and short rays over the sun, imposed within two curved designs forming the letter "L" with 3 uneven squares above the design, and with the name "Laguna Lakes" starting on the outer right side border of the sunset design with a large script capital L and the remaining letters "aguna" in lower case script and the word "LAKES" beneath it in all in capital letters with bullet points between each letter to appears as "L·A·K·E·S".

The applicant, Laguna Lakes Community Association, Inc., a corporation of Florida, having an address of
c/o Alliant Property Management, LLC,
6719 Winkler Road, Suite 200
Fort Myers, Florida 33919
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 035: Association services, namely, promoting the interests of condominium association and homeowner associations, managing the business affairs of the common community association of the HOAs and condominium association comprising the Laguna Lakes Community and promoting the use of and managing the maintenance of the real estate and improvements thereon owned by the community association.

In International Class 035, the mark was first used at least as early as 10/06/2003, and first used in

commerce at least as early as 10/06/2003, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Webpage of Laguna Lakes Community Association, Inc..

[Specimen File 1](#)

For informational purposes only, applicant's website address is: www.lagunalakesassociation.com

The applicant's current Attorney Information:

Donna M. Flammang of Brennan, Manna & Diamond, P.L.

3301 Bonita Beach Road, Suite 100

Bonita Springs, Florida 34134

United States

The applicant's current Correspondence Information:

Donna M. Flammang

Brennan, Manna & Diamond, P.L.

3301 Bonita Beach Road, Suite 100

Bonita Springs, Florida 34134

239-992-6578(phone)

239-992-9328(fax)

dmflammang@bmdpl.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Donna M. Flammang/ Date Signed: 09/02/2011

Signatory's Name: Donna M. Flammang

Signatory's Position: Attorney of Record, Florida Bar





[Public Homepage](#)
[Resident Login](#)
[Request Login](#)
[Online Payments](#)

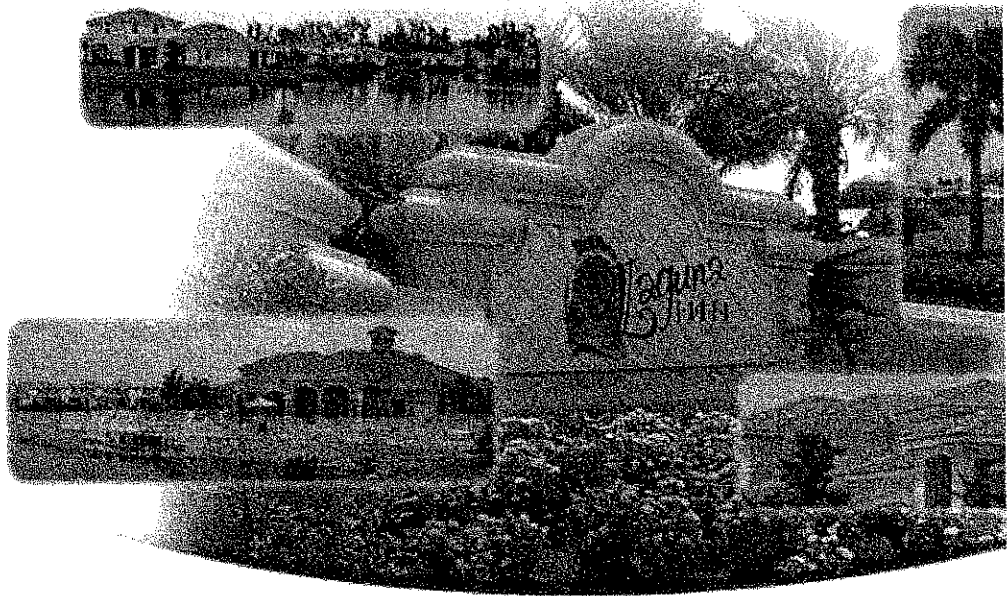
Amenities

[Homes/Condos
For Sale](#)

[Homes/Condos
For Rent](#)

[Map](#)

Laguna Lakes Community- "an exceptional place to



Located in tropical Southwest Florida, the upscale community of Lakes is within easy proximity to Fort Myers Beach and the barrier of Sanibel and Captiva. Beautiful homes and condominiums complement the residential setting, along with sparkling lakes and lush tropical vegetation. Our Clubhouse features many amenities including a gorgeous fully equipped kitchen and dining room, lovely "Family style" room for casual get togethers and billiard room for entertainment. The Clubhouse Complex includes tennis courts, a family pool, children's wading pool, spa, exercise room and more. All of the amenities for "Gracious Living" in a tropical setting.

Domain Name: LAGUNALAKESASSOCIATION.COM

Registrar URL: <http://www.godaddy.com>

Updated Date: 2012-05-30 09:23:53

Creation Date: 2006-08-24 12:31:26

← created 8/24/2006

Registrar Expiration Date: 2014-08-24 12:31:26

Registrar: GoDaddy.com, LLC

Registrant Name: Laguna Lakes

Registrant Organization: Laguna Lakes Community Association, Inc.

Registrant Street: 15250 Lakes of Laguna Blvd.

Registrant City: Fort Myers

Registrant State/Province: Florida

Registrant Postal Code: 33908

Registrant Country: United States

Admin Name: Laguna Lakes

Admin Organization: Laguna Lakes Community Association, Inc.

Admin Street: 15250 Lakes of Laguna Blvd.

Admin City: Fort Myers

Admin State/Province: Florida

Admin Postal Code: 33908

Admin Country: United States

Admin Phone: (239) 482-1469

Admin Fax:

Admin Email: noc@SolutionSense.com

Tech Name: Laguna Lakes

Tech Organization: Laguna Lakes Community Association, Inc.

Tech Street: 15250 Lakes of Laguna Blvd.

Tech City: Fort Myers

Tech State/Province: Florida

Tech Postal Code: 33908

Tech Country: United States

Tech Phone: (239) 482-1469

Tech Fax:

Tech Email: noc@SolutionSense.com

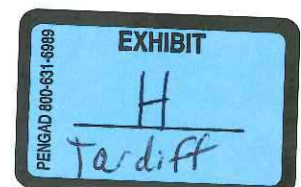
Name Server: NS.RACKSPACE.COM

Name Server: NS2.RACKSPACE.COM

The data contained in GoDaddy.com, LLC's Whois database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records.

Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, LLC. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" section. In most cases, GoDaddy.com, LLC is not the registrant of domain names listed in this database.



Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85411955

Filing Date: 08/31/2011

NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	<u>Laguna Lakes</u>
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Laguna Lakes
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Laguna Lakes Community Association, Inc.
INTERNAL ADDRESS	c/o Alliant Property Management, LLC
*STREET	6719 Winkler Road, Suite 200
*CITY	Fort Myers
*STATE (Required for U.S. applicants)	Florida
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S.)	33919



applicants only)	
PHONE	239-454-1101
EMAIL ADDRESS	trademarks@bmdllc.com
WEBSITE ADDRESS	www.lagunalakes.com
LEGAL ENTITY INFORMATION	
*TYPE	CORPORATION
* STATE/COUNTRY OF INCORPORATION	Florida
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	035
IDENTIFICATION	Association services, namely, promoting the interests of homeowners and condominium associations, managing the business affairs of the common community association of the HOAs and condominium association comprising the Laguna Lakes community and promoting the use of and managing the maintenance of the real estate and improvements thereon owned by the community association.
*FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/06/2003
FIRST USE IN COMMERCE DATE	At least as early as 10/06/2003
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	spec-7411823817-154501865_Lakes_Lakes_Community_Assoc.Website_page.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT11\IMAGEOUT11\854\119\85411955\xml1\FTK0003.JPG
SPECIMEN DESCRIPTION	First page of Laguna Lakes Community Association website - www.lagunalakesassociation.com
ADDITIONAL STATEMENTS SECTION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT	

(NAME/ LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
DISCLAIMER	No claim is made to the exclusive right to use any color or font style or size apart from the mark as shown.
ATTORNEY INFORMATION	
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*AUTHORIZED TO	

COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
* SIGNATURE	/Donna M. Flammang/
* SIGNATORY'S NAME	Donna M. Flammang
* SIGNATORY'S POSITION	Attorney of Record, Florida Bar Member
* DATE SIGNED	08/31/2011

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85411955

Filing Date: 08/31/2011

To the Commissioner for Trademarks:

MARK: Laguna Lakes (Standard Characters, see [mark](#))

The literal element of the mark consists of Laguna Lakes.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Laguna Lakes Community Association, Inc., a corporation of Florida, having an address of
c/o Alliant Property Management, LLC,
6719 Winkler Road, Suite 200
Fort Myers, Florida 33919
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 035: Association services, namely, promoting the interests of homeowners and condominium associations, managing the business affairs of the common community association of the HOAs and condominium association comprising the Laguna Lakes community and promoting the use of and managing the maintenance of the real estate and improvements thereon owned by the community association.

In International Class 035, the mark was first used at least as early as 10/06/2003, and first used in commerce at least as early as 10/06/2003, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) First page of Laguna Lakes Community Association website - www.lagunalakesassociation.com.

Original PDF file:

[spec-7411823817-154501865_Lakes_Lakes_Community_Assoc.Website_page.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

No claim is made to the exclusive right to use any color or font style or size apart from the mark as shown.

For informational purposes only, applicant's website address is: www.lagunalakes.com

The applicant's current Attorney Information:

Donna M. Flammang of Brennan, Manna & Diamond, P.L.

3301 Bonita Beach Road, Suite 100

Bonita Springs, Florida 34134

United States

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A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Donna M. Flammang/ Date Signed: 08/31/2011

Signatory's Name: Donna M. Flammang

Signatory's Position: Attorney of Record, Florida Bar Member

RAM Sale Number: 13823

RAM Accounting Date: 09/01/2011

Serial Number: 85411955

Internet Transmission Date: Wed Aug 31 15:57:49 EDT 2011

Laguna Lakes



[Public Homepage](#)

[Resident Login](#)

[Request Login](#)

[Online Payments](#)

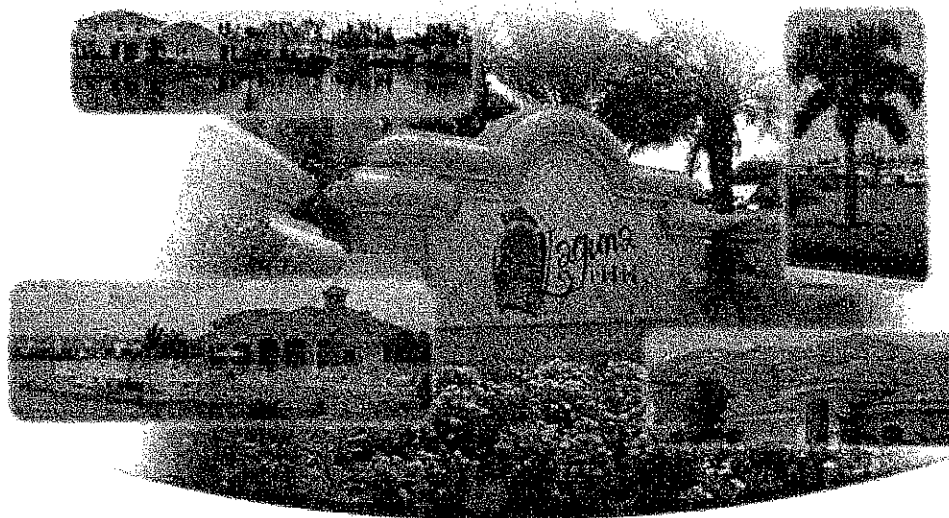
Amenities

[Homes/Condos
For Sale](#)

[Homes/Condos
For Rent](#)

[Map](#)

Laguna Lakes Community- "an exceptional place to live!"



Located in tropical Southwest Florida, the upscale community of Laguna Lakes is within easy proximity to Fort Myers Beach and the barrier islands of Sanibel and Captiva. Beautiful homes and condominiums comprise this residential setting, along with sparkling lakes and lush tropical vegetation. Our Clubhouse features many amenities including a gorgeous fully equipped kitchen and dining room, lovely "Family style" room for casual get togethers, and billiard room for entertainment. The Clubhouse Complex includes tennis courts, a family pool, children's wading pool, spa, exercise room and volleyball court. All of the amenities for "Gracious Living" in a tropical setting.

This web site is a service of [Alliant Property Management, LLC](#)

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
Post Office Box 1451
Alexandria, Virginia 22313-1451

JOHN G. MARINO,

vs.

OPPOSITION NO. 91204897
OPPOSITION NO. 91204941

LAGUNA LAKES COMMUNITY ASSOCIATION, INC.,

DEPOSITION OF: ROBERT ALLEN HAJICEK
DATE TAKEN: August 23, 2013
TIME: 4:52 p.m. to 5:39 p.m.
LOCATION: Von Ahn Associates, Inc.
13241 University Drive
Suite 104
Fort Myers, Florida
BEHALF OF: The Plaintiff
REPORTED BY: Marianne E. Sayers, RPR, CRR,
Court Reporter and Notary Public
State of Florida

VON AHN ASSOCIATES, INC.
Registered Professional Reporters
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Fort Myers, Florida 33901
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South Fort Myers * Naples * Punta Gorda

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By: Richard S. Annunziata, Esquire

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By: W. Scott Harders, Esquire
Chad Rothschild, Esquire

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17

ALSO PRESENT: John G. Marino

18

19

I N D E X

20

ATTORNEY	DIRECT	CROSS	REDIRECT	RECROSS
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21

MR. BEHREN	3			
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22

23

E X H I B I T S

24

NUMBER	DESCRIPTION	PAGE MARKED
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25

(None)

1 Thereupon,

2 ROBERT ALLEN HAJICEK,

3 a witness, called by counsel for Plaintiff, having
4 been first duly sworn by the court reporter, was
5 examined and testified as follows:

6 THE WITNESS: I do.

7 DIRECT EXAMINATION

8

9

10 (Witness sworn.)

11 THE WITNESS: I do.

12 BY MR. BEHREN:

13 Q Please state your name.

14 A Robert Allen Hajicek.

15 Q Can you spell it, please, for the reporter?

16 A R-O-B-E-R-T; Allen, A-L-L-E-N; Hajicek,
17 H-A-J-I-C-E-K.

18 Q Have you ever had a deposition taken before?

19 A No, I haven't.

20 Q Have you ever been convicted of a crime?

21 A No.

22 Q And you live in Laguna Lakes?

23 A Yes, I do.

24 Q And how long have you resided there for?

25 A We bought our condominium in March of 2005,

1 it was rented for five years, and we moved from Illinois
2 in July of 2010.

3 Q You moved to Illinois?

4 A Moved from Illinois to Laguna Lakes in 2010.

5 Q So, you bought it 2005, but you didn't live
6 there until 2010?

7 A That's right.

8 Q Why is that?

9 A Why is what?

10 Q Why did you buy the house and not live there
11 for five years?

12 A Because we intended to live there at some
13 point that we could.

14 Q And you bought it as new construction?

15 A Yes.

16 Q From who?

17 A From Transeastern.

18 Q And you were on the board of Laguna Lakes?

19 A Yes.

20 Q Are you still on the board?

21 A Yes.

22 Q How long you been on the board for?

23 A Since 2011, January.

24 Q Have you spoken with anybody about the fact
25 that you were giving a deposition here today?

1 A Have I spoken to anybody?

2 Q Yes.

3 A Yes.

4 Q Who?

5 A Well, our attorney.

6 Q Okay. Who, which attorney?

7 A The gentlemen who are on the phone.

8 Q Okay. Anyone else besides them?

9 A The gentlemen who are on the phone.

10 Q Okay. Anyone else besides the gentlemen who
11 are on the phone?

12 A No.

13 Q Did you speak with any other fellow or
14 current board members about giving a deposition in this
15 case?

16 A No, I haven't.

17 Q Do you have any discussions with Mr. Tardiss
18 at all? Tardiff, excuse me.

19 MR. ANNUNZIATA: Tardiff, yeah.

20 THE WITNESS: About the deposition?

21 MR. BEHREN: Yes.

22 THE WITNESS: No.

23 BY MR. BEHREN:

24 Q Okay. Have you had any discussions with
25 anybody on the board, without the presence of counsel,

1 relating to these trademark applications or Mr. Marino's
2 opposition to the trademark applications?

3 A Well, we just know that it-- that it's in
4 the litigation.

5 Q Okay. What do you know about it?

6 A Well, I know that -- what I know about it
7 is -- basically is that we are opposing -- we're --
8 we're trying to assert our rights to the ownership of
9 the Laguna Lakes logo.

10 Q And the name?

11 A Well, that's the name, Laguna Lakes.

12 Q Well, it's --

13 A Yeah.

14 Q -- there's a -- no, you have an application
15 for a logo --

16 A Well --

17 Q -- and a name.

18 A Well, it's -- they're -- yes, I consider
19 them to be together.

20 Q So, you claim -- you want to try to claim
21 ownership of the logo and the name Laguna Lakes?

22 A Yes.

23 Q Okay. Are you aware that there's other
24 developments out there in the United States that are
25 using the same name, Laguna Lakes?

1 A No.

2 Q Do you think that somehow you guys get to
3 trump them, as far as keeping them from using the name
4 Laguna Lakes?

5 A In other states?

6 Q Yeah.

7 A Well, I have no -- no -- I -- I would not
8 know that.

9 Q And actually -- who actually owns the logo
10 and the name?

11 A I don't know. I presume it's the
12 association, because the association is responsible and
13 has ownership of the other properties.

14 Q So, you presume that the association is the
15 owner of the name and the logo, but you have no actual
16 documentation or knowledge to support that; it's just
17 speculation on your part?

18 A Well, I wouldn't call it speculation,
19 considering the fact that it's on the entryway, and it's
20 called Laguna Lakes Community Association, and the
21 association manages the property, and the property owns
22 the logo.

23 Q How do you know the property owns the logo?

24 A Well, how do you know it doesn't?

25 Q I'm asking -- I'm not the one asking the --

1 I'm not the one answering questions today, you are,
2 so --

3 A Well, I don't --

4 Q -- the question is, how do you know -- since
5 you made the statement, the conclusory statement, that
6 the property -- the association owns the logo based --

7 A Because --

8 Q -- what do you base that upon?

9 A Based it on the fact that -- that the
10 declarations say that the board has a fiduciary
11 responsibility to the properties, and the property has
12 always been called Laguna Lakes Community -- you know,
13 Laguna Lakes Community, and therefore it would be
14 presumed that we do own it.

15 Q Okay. Where does the declaration indicate
16 somehow -- where in the declaration does it bestow
17 ownership of the logo and the name upon Laguna Lakes?

18 A Well, I guess I would have to look at the
19 declarations.

20 Q Isn't it true the declaration doesn't even
21 refer to the logo?

22 A I don't know that.

23 Q Isn't it true the declaration doesn't have
24 the logo anywhere in it?

25 A I don't know that, but I do know that the

1 property manual that was given to me, that has the
2 declarations in it, has a cover sheet that shows the
3 name Laguna Lakes and the logo.

4 Q Right. And the name Laguna Lakes and the
5 logo, that would have been from Transeastern, correct?

6 A It would be from whoever gave it to me at
7 the time we purchased.

8 Q Transeastern is the one who owned the name
9 and the logo, correct?

10 UNIDENTIFIED SPEAKER: Objection.

11 Go ahead, Bob, though, and answer it, if you
12 know.

13 THE WITNESS: I can't answer.

14 MR. BEHREN: I'm sorry?

15 THE WITNESS: I said I can't answer that.

16 BY MR. BEHREN:

17 Q So, you don't know? You don't know whether
18 Transeastern owned the name or the logo?

19 A No, I don't.

20 Q You would agree, though, that Transeastern
21 used the name and the logo all over its marketing
22 materials and correspondence and everything else that
23 they used when they sold you the property, correct?

24 A Yes, that's right.

25 Q And you would agree that the association

1 didn't develop this Laguna Lakes logo, correct?

2 A That they did not develop it?

3 Q Yeah. The association didn't create this
4 logo, did they?

5 A Well, it must have come along when
6 Transeastern transferred all of the assets to the
7 association.

8 Q Okay. Well, first let's back up.

9 So, Transeastern, you agree, is the one that
10 owned the logo and the name, correct?

11 A No, I -- I -- I don't know that.

12 Q Okay. So, what makes you say -- well, first
13 of all, how would Laguna Lakes -- how would Transeastern
14 have transferred the name and the logo if they didn't
15 own it?

16 A Well, maybe -- I don't know that.

17 Q Okay. So, you don't know if Transeastern
18 owned it.

19 And you don't know that Transeastern
20 transferred the name or the logo over to the
21 association, do you? Again, this is all speculation on
22 your part, correct?

23 A I don't know the answer to that.

24 Q You don't know if it's speculation on your
25 part?

1 A No, because I would think that we do own it,
2 because it has been used on the documents that I
3 received when we purchased the property, and it's used
4 on the entryway to the community. So, how could you
5 assume otherwise?

6 Q Well, isn't it true that Transeastern was
7 using it on all of its materials?

8 A Yes, that's right.

9 Q And it was using the name and the logo --

10 A Uh-huh.

11 Q -- up through 2006, when they finally
12 stopped selling new properties, correct?

13 A Well, yes, but maybe that's a good reason to
14 assume that they did own it, if they were using it.

15 Q Right.

16 And they -- and they also owned the domain
17 name LagunaLakes.com, didn't they?

18 A Well, that I don't know.

19 Q Okay. Isn't it true that -- you know the
20 association has a domain name, correct?

21 A Yes, I know --

22 Q Do you know what it is?

23 A No.

24 Q Do you know, is it LagunaLakes.com?

25 A I don't -- I'm not -- I'm not a tech guy, so

1 when you talk about domain, I'm not sure what you're
2 referring to.

3 Q Okay. You would agree, too, that the sole
4 business of Laguna Lakes Community Association is to
5 collect assessments and maintain the common areas as set
6 forth in the declarations, right?

7 A It says we have a fiduciary responsibility
8 for the management of the -- of the association, which
9 is the corporation.

10 Q Right, which is to collect the assessments
11 and manage the common areas as set forth in the
12 declarations, correct?

13 A That's part of it, yes.

14 Q What else is part of it?

15 A Setting rules.

16 Q Okay. Setting rules with regard to how
17 people maintain properties within the association,
18 right?

19 A That, as well as -- there are some issues --
20 yeah, I would say that's correct.

21 Q Okay. What else -- what else would there
22 be?

23 A Well, there would be other rules, as far as
24 taking your garbage cans in.

25 Q Uh-huh.

1 A There would be other --

2 Q That's in the declarations, though, isn't
3 it?

4 A Pardon me?

5 Q That would be in the declarations
6 themselves, though, correct?

7 A Well, not all the rules would be in the
8 declaration, because the association has a right to make
9 rules.

10 Q Okay. So, are there separate rules out
11 there somewhere that the association has made outside of
12 the declaration?

13 A Well, there probably would be, in the
14 minutes.

15 Q Is there some rule that was made up by the
16 association board that people are not allowed to use the
17 logo or name Laguna Lakes?

18 A I don't know that.

19 Q There isn't, is there?

20 A No, I said I don't know that.

21 Q Okay. You're not aware of any rule, though?

22 A I said I don't know that.

23 Q Again, so you're not aware of any rule?

24 A I said I don't know that.

25 Q You don't know of any rule that's out there?

1 A I said I don't know that.

2 Q Well, you're going to have to explain
3 what -- what you mean by you don't know that if --

4 A Well, there could be, at -- at some point
5 there could have been that I would have not -- I would
6 have no knowledge of.

7 Q That's what I'm saying, you have no
8 knowledge of any of those rules?

9 A As I'm saying, as I've said to you, I just
10 answered your question.

11 Q What interstate commerce that you're aware
12 of is Laguna Lakes engaging in?

13 UNIDENTIFIED SPEAKER: Objection.

14 But go ahead, Bob, and answer, if you know.

15 THE WITNESS: I don't know of any interstate
16 commerce that is -- that it's engaged in.

17 BY MR. BEHREN:

18 Q And with regard to this -- why is it that
19 the Laguna association decided to seek or submit a
20 trademark application for the name Laguna Lakes and the
21 logo?

22 A Because it was being used by Mr. Marino.

23 Q Okay. And what -- what was wrong with
24 Mr. Marino using the name and the logo?

25 A Because it is a -- it is obviously -- was

1 created for the community association. It was --

2 Q How do you know -- how do you know that?
3 The community association didn't create the logo, did
4 they?

5 A Well, they didn't create it for Mr. --
6 Mr. Marino.

7 MR. BEHREN: Sorry, just one second.

8 (Off-the-record discussion.)

9 MR. BEHREN: Go ahead.

10 Can you read back the last question and
11 answer, please?

12 (Portion of the record read back by the
13 court reporter.)

14 BY MR. BEHREN:

15 Q Okay. You don't know why they created it,
16 do you?

17 A Oh, yes. I -- I would think that that's a
18 simple business question and that most business people
19 would understand that when you create a logo, you're
20 trying to create a value, you're trying to create an
21 image. You're trying to create a value to what you're
22 selling. And that's exactly the reason why we are
23 protecting the logo, because we feel it has a value, it
24 creates an image for the people who own property within
25 the community, and it adds value to say that you live in

1 Laguna Lakes.

2 Q You're not selling anything?

3 A Oh, yes, we are selling -- we're -- we're
4 trying to maintain the value of the property for the
5 people who have bought into it.

6 Q So, you're not selling anything, are you?

7 A What do you mean selling anything?

8 Q You're not -- the community -- the Laguna
9 Lakes Community Association is not selling anything, are
10 they?

11 A As far as -- as what?

12 Q They are not selling anything?

13 A You mean we are not selling property?

14 Q They are not selling anything, period,
15 correct?

16 A Well, what does that have to do with it?

17 Q Is Laguna Lakes Community Association
18 selling anything or not?

19 A We don't sell any -- we don't sell any
20 property.

21 Q You don't sell anything, do you?

22 A Yeah, we -- we sell candy bars and we sell
23 soft drinks at our --

24 Q Okay.

25 A -- at our clubhouse.

1 Q Okay. Anything else besides candy bars and
2 soft drinks in the clubhouse?

3 A Yeah, popcorn, water. Yeah, that's --
4 that's about it.

5 Q Okay. And so -- and how is it that
6 Mr. Marino was -- is damaging the association by using
7 the name and logo?

8 A Well, it's -- it is a matter of this:
9 That -- that we need to have the -- we need the logo,
10 and we need to have a clear ownership of the logo,
11 because, as Mr. Marino is using it, somebody else may
12 come along and use it. It could be Joe's Plumbing
13 Company, Mr. Plumber of Laguna Lakes. It could be
14 Mr. Electrician of Laguna Lakes. It could be, you know,
15 Mr. Bug Control of Laguna Lakes. And so that -- we
16 can't control those people who use the name, those
17 people who use the name, and therefore what image they
18 would -- how they -- how they would hurt the image of
19 Laguna Lakes Community Association.

20 Q Okay. But, as far as you know, Mr. Marino
21 hasn't been harming the image of Laguna Lakes Community
22 Association, has he?

23 A I don't know.

24 Q As far as you know, you don't -- you're not
25 aware of any damage he's caused to the association, are

1 you?

2 A No, I'm not, but, of course, it's like any
3 other business. Businesses get into business deals, and
4 to have a -- to have Mr. Plumber of Laguna Lakes
5 possibly having -- doing business at Laguna Lakes with
6 that name and gets into a conflict with one of the
7 property owners over a plumbing issue and Mr. Plumber
8 gets sued, presumably they could sue also the
9 association, because the association permitted that name
10 to be used for Mr. Joe Plumber.

11 Q So, is it your position that no one's going
12 to be able to use the name Laguna Lakes if you guys
13 trademark it?

14 A It's my position that we use it for the
15 community association.

16 Q So, the question is, does that mean that no
17 one else is allowed to use the name Laguna Lakes?

18 A Well, it -- it is the -- it is our
19 property --

20 Q Okay.

21 A -- to be used as it is right now, as a
22 designation for the -- for the community --

23 Q Okay.

24 A -- for the community.

25 Q Parcel associations, they use the name and

1 the logo, right?

2 A Yes, because they are part of the
3 association.

4 Q Okay. But -- so, you haven't asked them to
5 stop using the name and the logo, correct?

6 A That's right, because the association,
7 they're -- they're a part of the association, they are a
8 parcel.

9 Q And sometime in 2011 you had a --
10 discussions with Mr. Marino about his use of the name
11 and the logo, correct?

12 A Uh-huh.

13 Q Went by his house, right?

14 A Uh-huh.

15 Q You had a -- your big dog with you, correct?

16 A That's right.

17 Q And he was barking at Mr. Marino, right?

18 A Well, I don't know that he was barking at
19 Mr. Marino.

20 Q But he was protecting you, right?

21 A I don't recall that.

22 Q Okay. And -- and at that time you told him,
23 you shouldn't be using the name and the logo anymore
24 because it's trademarked, right?

25 A I don't know if those were my exact words,

1 but I did say that if he was using the name Laguna Lakes
2 and our logo, and that was a logo for the -- for the
3 community.

4 Q You told him it was trademarked, right?

5 A I don't recall that I used -- said it was
6 trademarked --

7 Q Okay.

8 A -- because at that time I wouldn't have
9 known that.

10 Q What was Mr. Marino's response?

11 A He said he knew a lot about trademarking,
12 and that he knew that he -- what he was doing was all
13 right.

14 Q And that it wasn't -- that what you claimed
15 to have been trademarked wasn't trademarked, correct?

16 A Well, I don't exactly remember his exact
17 words.

18 Q Okay. So, that -- what happened -- and then
19 at some point in time, you guys at -- on the association
20 board decided to trademark the -- try to trademark the
21 name and the logo, correct?

22 A Yes.

23 Q What was discussed at those meetings?

24 UNIDENTIFIED SPEAKER: Objection.

25 And I just want to caution the witness,

1 the -- any -- any discussions at a private board
2 meeting with the attorney are privileged and we
3 shouldn't talk about those, but if there were
4 discussions in a public meeting, then we can talk
5 about the substance of those public conversations.
6 Do you understand the distinction?

7 THE WITNESS: Yes, I do.

8 UNIDENTIFIED SPEAKER: Okay. You can go
9 ahead and answer, to the extent you can.

10 THE WITNESS: What was the question? Say it
11 again.

12 MR. BEHREN: I'm sorry?

13 THE WITNESS: What was the question again?

14 MR. BEHREN: Can you read back the question,
15 please?

16 (Portion of the record read back by the
17 court reporter.)

18 THE WITNESS: That's a hard question to
19 answer, because I don't know if that was in public
20 discussion or if that was in private discussion
21 with our attorney. We'd really have to look at
22 previous minutes to determine whether or not that
23 was public. I don't know.

24 BY MR. BEHREN:

25 Q So, you don't know whether it was publicly

1 discussed. Well, there was -- there was definitely
2 discussions about the trademark at the -- one meeting
3 where it was voted upon by Ms. Cowart to apply for those
4 trademarks, correct?

5 A Well, that would be the case, that -- that
6 that would have appeared in the -- in the minutes, yes.

7 Q What other public discussions were there
8 about the trademark?

9 A That I don't recall.

10 Q Why is it that you all chose to use
11 Ms. Flammang for this trademark?

12 A Why did we what?

13 Q Why is it you chose to use Ms. Flammang to
14 seek this trademark when she was a board member?

15 A Well, I think that that would be privileged.

16 Q Guess what, you don't get to assert
17 privilege.

18 A Oh, I don't?

19 Q No.

20 THE WITNESS: Okay. Well, then, I'm going
21 to ask my attorney, do I have to answer that
22 question?

23 MR. ANNUNZIATA: Ask Scott.

24 MR. HARDERS: If the question is why did we
25 select attorney Flammang to file for the trademark

1 applications, if you know, you can -- you can
2 answer that, but you shouldn't talk about any of
3 the discussions between the board, or individuals
4 on the board, and the attorney about the
5 applications.

6 THE WITNESS: Yeah.

7 Because she -- to answer that question,
8 because she is an attorney and she would -- would
9 help provide us with some direction.

10 BY MR. BEHREN:

11 Q Did Ms. Flammang counsel you guys about the
12 process and the procedures for filing the federal
13 trademarks?

14 MR. ANNUNZIATA: I think it's an objection.
15 Attorney/client privilege.

16 BY MR. BEHREN:

17 Q At public meetings, did Ms. Flammang counsel
18 you guys about the process for filing the federal
19 trademarks?

20 A At the meeting?

21 Q Yeah.

22 A I don't recall.

23 MR. ANNUNZIATA: Qualified as a public
24 meeting, at a public meeting, did she counsel you
25 guys?

1 BY MR. BEHREN:

2 Q Did Ms. Flammang ever discuss with you guys
3 at any public meetings whether or not you needed to be
4 the owners or creators of the logo and the name in order
5 to trademark it?

6 A You know, we are going to have to go back to
7 the minutes. I just don't recall.

8 Q Did Ms. Flammang ever discuss with you at
9 public meetings that it is a -- potentially a criminal
10 offense to file false information in a trademark
11 application?

12 A I don't ever recall that at all.

13 Q Did Ms. Flammang ever discuss with you at
14 any public meetings what the obligation would be of the
15 board in order to maintain the trademark if there's
16 other developments and persons around the country using
17 the name?

18 A I have no recollection of that.

19 Q Did she ever tell you that maybe if there
20 was other people out there using the name and you
21 trademarked it, that you could be waiving your trademark
22 rights? Was that ever discussed?

23 UNIDENTIFIED SPEAKER: Objection.

24 I just would clarify that that -- that if
25 this conversation happened in a public meeting,

1 then it's okay to answer; but if it was private,
2 please don't.

3 THE WITNESS: I -- I just don't recall.

4 BY MR. BEHREN:

5 Q On that particular motion to trademark the
6 name and the logo, why did you second that motion?

7 A Well, if it shows that I seconded the
8 motion -- if there was a motion -- what was the motion?

9 Q The motion was to trademark the logo and the
10 name.

11 A Okay.

12 Q The motion was made by Ms. Cowart.

13 A Okay. And so your question is why did I
14 second it?

15 Q Yes.

16 A Because I agreed with it.

17 Q Okay. Why?

18 A Well, because -- why?

19 Q Yeah.

20 A Well, because I did.

21 Q Okay. Well, why?

22 A Why? Because I felt that the trademark
23 should be ours, it should belong -- belong to the
24 association and should be only used when given
25 permission or when it -- or if it be licensed.

1 Q Do you know when it was that the association
2 first started using the name and the logo?

3 A Well, I wouldn't know when it first started
4 using it, I would only know in 2004, when -- when I was
5 looking at the purchase of the property, to have seen
6 the logo and the trademark.

7 Q Okay. Well, when you saw the logo and the
8 trademark with regard to the purchase of the property --

9 A Yeah.

10 Q -- you saw the logo and the trademark where?

11 A Probably -- well, I -- you know, I can't
12 tell you. Probably on some of their sales literature.
13 And that was -- that would have been December of 2004.

14 Q On Transeastern sales literature, correct?

15 A Well, whosever sales literature it was.

16 Q Well, you didn't buy your unit from the
17 community association, did you?

18 A No, I just -- I said to you earlier that we
19 brought it from Transeastern.

20 Q Right. One of the Transeastern entities,
21 correct?

22 A Yeah.

23 Q Well, you don't know the difference between
24 Transeastern Laguna Lakes, LLC or Transeastern Homes,
25 LLC, do you?

1 A I -- I wouldn't know that -- at that time,
2 it was not clear. My understanding, we were buying it
3 from Transeastern.

4 Q And -- is there a paper clip?

5 (Off-the-record discussion.)

6 BY MR. BEHREN:

7 Q Let me show you exhibits G and I.

8 A Yep.

9 Q These are the applications for the
10 trademarks for the logo and the name.

11 A Uh-huh, yeah.

12 Q You recognize those?

13 A I probably -- if these were -- I believe
14 that these may have been made available to us at the
15 time that we were -- you know, that the trademark was
16 being -- that the application was being made, but it's
17 been a long time and I just don't recall these
18 specifically.

19 The ones with the -- this color on them, I
20 don't recall that.

21 And the other document, you're saying is
22 the -- these two? Well, this, I believe, was on the
23 cover of the book that I received, with the documents.
24 And, of course, this is a picture of the -- our
25 entryway, which shows the name and the logo.

1 Q That's a picture actually -- that picture
2 actually is the website home page for the association,
3 correct?

4 A I would have to go back and look at it.

5 Q Well, look at it. Look at the side there.

6 A Yeah.

7 Oh, if that's what -- if that's what it
8 says, yeah, then that's what it is.

9 Q Okay. So, that's what was used as the
10 specimen here on that particular application, right?

11 But you don't know when actually that
12 website was created, do you?

13 A No, I don't.

14 Q Okay. The question is, did you see this
15 application before it was submitted to the trademark
16 office?

17 A I don't recall.

18 Q Okay. This other application, Exhibit I,
19 did you see that application before it was submitted to
20 the trademark office?

21 A Let's see.

22 If it was provided to us as board members, I
23 would have seen it. I don't recall it right now. I
24 don't recall the document right now.

25 Q All right.

1 A What was the date of the submission on that?

2 Q The applications were in August of 2011 --

3 A Yeah, that's --

4 Q -- and September 2011.

5 A Yeah. That would have been a pretty long
6 time ago, that's why I'm not recalling that.

7 MR. BEHREN: All right. Hold on. Let me
8 speak with you for a second, Gerard.

9 (A brief recess was taken.)

10 BY MR. BEHREN:

11 Q Are you aware of anybody at some --
12 expressing to you confusion about Gerard Marino's
13 affiliation with the Laguna Lakes Community Association?

14 A No.

15 MR. MARINO: How about the other way around;
16 anybody ever ask them to buy real estate?

17 BY MR. BEHREN:

18 Q Anybody ever ask the association, or you, as
19 a member of the association, to buy real estate?

20 A To ask --

21 Q Has anybody ever asked you, as a member of
22 the association, to buy real estate from you in Laguna
23 Lakes?

24 MR. MARINO: I think you meant --

25 MR. BEHREN: Stop.

1 MR. MARINO: I know, I don't know how else
2 to do it.

3 (Off-the-record discussion.)

4 THE WITNESS: Say that one more time.

5 MR. BEHREN: Would you read back that
6 question, please?

7 (Portion of the record read back by the
8 court reporter.)

9 THE WITNESS: Say it again one more time.

10 (Portion of the record read back by the
11 court reporter.)

12 THE WITNESS: No.

13 MR. MARINO: Scott, can I see you outside
14 for a second?

15 (A brief recess was taken.)

16 BY MR. BEHREN:

17 Q Do you know how much has been expended so
18 far by the association on prosecuting the application of
19 these trademarks?

20 A Yeah, it's been around \$10,000.

21 Q Do you think that this has been in the best
22 interests of the association, to continue to try to
23 prosecute ownership of the name and the logo?

24 A Yes, because it has intrinsic value.

25 Q Haven't association members complained about

1 this folly?

2 MR. ANNUNZIATA: Objection to that
3 characterization of what this proceeding --

4 MR. BEHREN: Wait a minute.

5 MR. ANNUNZIATA: -- what these legal
6 proceedings are.

7 MR. BEHREN: Again, now, we have one --
8 there's one lawyer making objections, that's
9 Mr. Harders on the phone.

10 MR. ANNUNZIATA: Well, I'm an attorney.
11 I'm -- I'm -- I'm -- I don't know that he heard
12 the word folly, so I'm just, for the record,
13 saying I don't --

14 UNIDENTIFIED SPEAKER: Characterizing this
15 deposition?

16 MR. ANNUNZIATA: The whole proceedings, this
17 folly, he called it.

18 Repeat the question back, please, for
19 Mr. Harder, so he can hear it, as loudly as you
20 can, please.

21 (Portion of the record read back by the
22 court reporter.)

23 MR. HARDERS: Okay. Yeah, objection.

24 But, Bob, you can go ahead and answer to the
25 extent you can do it.

1 THE WITNESS: I think we had a question at a
2 board meeting -- a question at a board meeting
3 about the expenditure.

4 BY MR. BEHREN:

5 Q And what was the response?

6 A Well, the response was, is it was -- it's an
7 asset of the corporation that we are going to protect as
8 a fiduciary responsibility --

9 Q And isn't there --

10 A -- that we have.

11 Q And isn't there also -- hasn't there also
12 been complaints about the fact that Mrs. Flammang, a
13 board member, was being used as the lawyer to do this?

14 A I don't -- I don't know that that -- are you
15 talking about at a board meeting?

16 Q Yeah. Did people complain, homeowners,
17 complain about the fact that Ms. Flammang, a board
18 member, was being used for this trademark?

19 A That I don't recall either. There may -- if
20 there was, it should show up -- possibly would show up
21 in the minutes.

22 Q Well, the problem is that I haven't been
23 produced the minutes, so -- even though we asked for
24 them, we didn't get anything other than one of --
25 actually, we didn't even get one of them, I don't think.

1 MR. HARDERS: Objection to the --

2 MR. BEHREN: I'm sorry?

3 THE COURT REPORTER: I'm sorry?

4 MR. HARDERS: Just objection to the -- I
5 mean, to the --

6 BY MR. BEHREN:

7 Q You would agree that --

8 MR. ANNUNZIATA: Wait, wait, wait, wait,
9 wait. Scott Harders was in the middle of an
10 objection.

11 MR. BEHREN: Go ahead.

12 MR. ANNUNZIATA: Please finish your
13 objection, Scott.

14 MR. HARDERS: Just to the -- to the -- to
15 the sidebar discussion that counsel is having. If
16 we can get the questions out, which I understand
17 he is about to do, that would be great.

18 BY MR. BEHREN:

19 Q I'm assuming that the association has copies
20 of all of their minutes, meeting minutes, for the
21 past -- since -- certainly since 2011 forward, correct?

22 A Yes.

23 Q And those should supposedly address some of
24 these trademark issues that may have been discussed at
25 meetings, right?

1 A Yes, that -- that would be in -- that you
2 were talking about, when their motions are made,
3 certainly.

4 Q Any idea why they weren't given to us?

5 A I have no idea that you requested --

6 Q Any idea why they are not on the website?

7 A No. I mean, they are available -- they are
8 available as part of the documents that we have as a --
9 of -- for our meetings, through the community, through
10 the management company.

11 MR. BEHREN: All right. I don't have
12 anything further.

13 Does he want to read or waive?

14 MR. HARDERS: I would just like to add a
15 couple things to the record, if we could, before
16 that.

17 Okay. Just I -- I would like to identify
18 Mr. Hajicek's deposition testimony and
19 Mr. Tardiff's deposition testimony as highly
20 confidential under the board's standard protective
21 order, which is applicable to this and all cases.

22 MR. BEHREN: Well, I don't know that I'm
23 going to agree to that. I would have to look into
24 the issue, so we'll have to --

25 MR. HARDERS: Well, you don't -- you don't

1 have to agree. If one party, you know, asks for
2 it, it happens until it's undone. So, you can
3 look into it and petition the board to have it
4 undone, but I would like these two depositions
5 marked highly confidential, just due to the
6 sensitive nature of the board operations that were
7 discussed on -- in those two particular.

8 And that's -- that's all I have got. We can
9 discuss the preliminary -- or the -- the details
10 now.

11 And we -- and we'll read. Mr. Hajicek will
12 read as well.

13 MR. BEHREN: He'll read.

14 And, Chad, you need to make a -- you need to
15 let me know when on Monday we can set up a time to
16 call George, and hopefully -- I'm not going to
17 expect it now, it's already 5:30, but at some
18 point over the weekend, you can respond to my
19 e-mail relating to the discovery. I think my
20 request for admissions -- the request for
21 admissions that you all didn't respond to, I
22 think --

23 MR. ROTHSCHILD: Objection. We did respond,
24 objected, which is entirely --

25 MR. BEHREN: Chad, can you let me finish

1 speaking, please?

2 MR. ROTHSCHILD: No, I want to --

3 MR. BEHREN: No, no, no. You can -- you can
4 make whatever objection you want and you can --
5 you can pound on your chest all you like after I'm
6 done talking, okay?

7 MR. ROTHSCHILD: Fair enough.

8 MR. BEHREN: Number one, with regard to the
9 requests for admissions, which I don't think were
10 fully responsive, I don't know that we really need
11 to go forward on motions to compel on those,
12 because I asked the corporate rep pretty much
13 about all of the ones that I wanted answers to,
14 and he answered most of them; all right?

15 The interrogatories also, I don't know that
16 there's a lot of information.

17 The request for production, there are
18 documents that we are clearly entitled to that we
19 didn't get; for instance, minute meetings,
20 minutes -- you know, minutes of these board
21 meetings, we didn't get one from you guys, even
22 though, as you said, you were going to produce
23 them. So, there's a bunch of documents that you
24 said you were going to produce that you didn't
25 produce. There's a bunch of documents that you

1 said you were going to produce that your corporate
2 representative said you don't have. So, if you
3 want to amend to indicate that you don't have
4 responsive documents, that would be fine also; all
5 right?

6 And then finally, the --

7 MR. ROTHSCHILD: I --

8 MR. BEHREN: Wait. Hold on a second.

9 And the other issue I want to address then
10 also with George on Monday is the fact that your
11 corporate representative did not have knowledge of
12 all the areas that he was supposed to have had
13 knowledge of, and I'm going to reask again to
14 depose Ms. Flammang, in accordance with this prior
15 ruling.

16 MR. ROTHSCHILD: Are you finished?

17 MR. BEHREN: What's that?

18 MR. ROTHSCHILD: Are you finished?

19 MR. BEHREN: Yeah.

20 MR. ROTHSCHILD: Okay. There's a couple
21 things.

22 I was not even (inaudible) request for
23 admissions --

24 (Off-the-record discussion.)

25 MR. ROTHSCHILD: This is Chad Rothschild.

1 I'm looking at Exhibit F, the board meeting
2 minutes, which it looks like the agenda was
3 prepared by Alliant Association Management, who is
4 not a party to this, you know, opposition
5 proceeding. To my knowledge, I'm not sure if the
6 community association as an entity has physical
7 copies of the meeting minutes or whether that's
8 something that Alliant puts up. As far as I am
9 aware, we have produced all responsive documents.

10 MR. BEHREN: Chad, you produced zero meeting
11 minutes, and your association president and
12 corporate representative said that you guys have
13 them and --

14 MR. ROTHSCHILD: Well, what --

15 MR. BEHREN: -- that they are available for
16 production and --

17 MR. ANNUNZIATA: Wait, wait, wait, wait,
18 wait --

19 MR. BEHREN: -- that they should have been
20 posted on the website, but they are not.

21 MR. ANNUNZIATA: I'm going to interrupt this
22 real quick.

23 Can we release the witness?

24 MR. BEHREN: Yes.

25 MR. ANNUNZIATA: Okay. You're free. We are

1 going to have a fight with lawyers, okay, so
2 you're free to go.

3 THE WITNESS: Okay.

4 MR. ANNUNZIATA: Thank you, sir.

5 THE WITNESS: Oh, you're welcome.

6 MR. ROTHSCHILD: We'll look for them. If we
7 have copies of them --

8 MR. BEHREN: Your -- your representative
9 already said you have them. He said they should
10 have been attached to the website, and he doesn't
11 know why they're not.

12 MR. ROTHSCHILD: Okay.

13 MR. ANNUNZIATA: But it doesn't mean they
14 don't exist.

15 (Off-the-record discussion.)

16 MR. BEHREN: So, like I said, Chad, I think
17 that a good number of the issues for discovery can
18 be resolved, but I would like to have my
19 conference call with George on Monday, so --

20 MR. ROTHSCHILD: Back to take a look at your
21 concerns. Obviously, we haven't had a chance to
22 look at them in detail --

23 MR. ANNUNZIATA: Why is this on the record?

24 MR. ROTHSCHILD: -- until now --

25 MR. BEHREN: Because I don't want George

1 accusing me of not trying to address these issues
2 in good faith with opposing counsel, since --

3 MR. ROTHSCHILD: And --

4 MR. BEHREN: -- since that's what opposing
5 counsel wants to keep on arguing every time that I
6 file a motion to compel, that I haven't tried to
7 work them out in good faith.

8 MR. ROTHSCHILD: Since we are on the record,
9 I think the only good faith effort he made was on
10 Thursday, when he did finally send us some narrow
11 responses. Until then, you said all of our
12 responses were deficient, which is, in our
13 opinion -- in my opinion, not a good faith effort.
14 And I think the board agreed with that. That
15 said, we will do our best to address the concerns
16 you raised in the Word document you sent us on
17 Thursday.

18 MR. BEHREN: Well, like I said, I need to
19 know -- you need to let me know over the weekend
20 by e-mail, and I want a time on Monday when we can
21 call George.

22 MR. ROTHSCHILD: And on the record, I would
23 just like to add we have requested the notes from
24 Mr. Behren.

25 MR. BEHREN: The notes are -- the notes are

1 privileged. The notes were communications with me
2 and annotations of documents for me.

3 MR. ROTHSCHILD: A note --

4 MR. BEHREN: That's all he has.

5 MR. ROTHSCHILD: A note that Mr. Behren said
6 he refused prior to the deposition.

7 MR. BEHREN: That's the notes I'm talking
8 about. They are privileged. They were
9 annotations to documents that he prepared for me.
10 I asked -- I asked him about the notes. He
11 doesn't have separate personal notes.

12 MR. HARDERS: Okay. Well, I mean, you have
13 asked us for a privilege log on some things that I
14 expect we can expect the same response from you.

15 MR. BEHREN: That's fine.

16 MR. HARDERS: Okay.

17 (Deposition concluded.)

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DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES

RE: Marino vs. Laguna Lakes

[illegible]

Under the penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

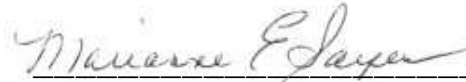
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CERTIFICATE OF OATH

I, Marianne E. Sayers, RPR, CRR, Notary Public,
State of Florida at Large, certify that the witness
ROBERT ALLEN HAJICEK personally appeared before me on
August 23, 2013 and was/were duly sworn.

(This certificate has been digitally signed.)



Marianne E. Sayers, RPR, CRR,
Notary Public, State of Florida
Commission DD942088
Commission Expires 1/19/2014

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CERTIFICATE OF REPORTER

3

STATE OF FLORIDA)

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COUNTY OF LEE)

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I, Marianne E. Sayers, RPR, CRR, do hereby certify that I was authorized to and did stenographically report the deposition of ROBERT ALLEN HAJICEK; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

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I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

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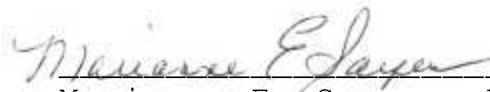
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DATED this 9th day of September, 2013.

(This certificate has been digitally signed.)



Marianne E. Sayers, RPR, CRR

FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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ARTICLES OF INCORPORATION
OF
LAGUNA LAKES COMMUNITY ASSOCIATION, INC.

The undersigned incorporator, for the purpose of forming a corporation not-for-profit pursuant to the laws of the State of Florida, Florida Statutes, Chapter 617, hereby adopts the following Articles of Incorporation:

PREAMBLE

TRANSEASTERN LAGUNA LAKES, LLC, a Florida limited liability company ("DECLARANT"), owns certain property in Lee County, Florida (the "SUBJECT PROPERTY"), and intends to execute and record a Master Declaration for Laguna Lakes (the "DECLARATION") which will affect the SUBJECT PROPERTY. This association is being formed as the association to administer the DECLARATION, and to perform the duties and exercise the powers pursuant to the DECLARATION, as and when the DECLARATION is recorded in the Public Records of Lee County, Florida, with these Articles of Incorporation attached as an exhibit. All of the definitions contained in the DECLARATION shall apply to these Articles of Incorporation, and to the Bylaws of the COMMUNITY ASSOCIATION.

ARTICLE 1. - NAME AND ADDRESS

The name of the corporation is LAGUNA LAKES COMMUNITY ASSOCIATION, INC., hereinafter referred to as the "COMMUNITY ASSOCIATION." The initial address of the principal office of the COMMUNITY ASSOCIATION and the initial mailing address of the COMMUNITY ASSOCIATION is 3300 University Drive, Coral Springs, Florida 33065.

ARTICLE 2. - PURPOSE

The purposes for which the COMMUNITY ASSOCIATION is organized are as follows:

2.1 To operate as a corporation not-for-profit pursuant to Chapter 617 of the Florida Statutes.

2.2 To enforce and exercise the duties of the COMMUNITY ASSOCIATION as provided in the DECLARATION.

2.2.1 To promote the health, safety, welfare, comfort, and social and economic welfare of the members, and the OWNERS and residents of the SUBJECT PROPERTY, as authorized by the DECLARATION, by these ARTICLES, and by the BYLAWS.

ARTICLE 3. - POWERS AND DUTIES

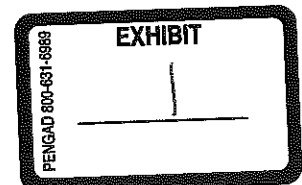
The COMMUNITY ASSOCIATION shall have the following powers and duties:

3.1 All of the common law and statutory powers of a corporation not-for-profit under the laws of the State of Florida.

3.2 To administer, enforce, carry out and perform all of the acts, functions, rights and duties provided in, or contemplated by, the DECLARATION, including but not limited to, the following:

3.2.1 To own, purchase, sell, mortgage, encumber, lease, administer, manage, operate, maintain, improve, repair and/or replace real and personal property.

3.2.2 To make and collect ASSESSMENTS against OWNERS to defray the costs, expenses and losses incurred or to be incurred by the COMMUNITY ASSOCIATION, and to use the proceeds thereof in the exercise of the COMMUNITY ASSOCIATION'S powers and duties.



3.2.3 To enforce the provisions of the DECLARATION, these ARTICLES, and the BYLAWS.

3.2.4 To make, establish and enforce reasonable rules and regulations governing the use of COMMON AREAS, LOTS, UNITS and other property under the jurisdiction of the COMMUNITY ASSOCIATION.

3.2.5 To grant and modify easements, and to dedicate property owned by the COMMUNITY ASSOCIATION to any public or quasi-public agency, authority or utility company for public, utility, drainage and cable television purposes.

3.2.6 To borrow money for the purposes of carrying out the powers and duties of the COMMUNITY ASSOCIATION.

3.2.7 To exercise control over exterior alterations, additions, improvements, or changes in accordance with the terms of the DECLARATION.

3.2.8 To obtain insurance as provided by the DECLARATION.

3.2.9 To employ personnel necessary to perform the obligations, services and duties required of or to be performed by the COMMUNITY ASSOCIATION and for proper operation of the properties for which the COMMUNITY ASSOCIATION is responsible, or to contract with others for the performance of such obligations, services and/or duties.

3.2.10 To sue and be sued.

3.2.11 To operate and maintain the surface water management system for the SUBJECT PROPERTY as permitted by the South Florida Water Management District (the "SFWMD"), including all lakes, retention areas, culverts and related appurtenances, as may be applicable, and to comply with the requirements of any permit issued by the SFWMD for the SUBJECT PROPERTY.

3.2.12 To contract for cable television, security and other services for the SUBJECT PROPERTY.

ARTICLE 4. - MEMBERS

4.1 MEMBERS.

4.1.1 PARCEL ASSOCIATION MEMBER. Each PARCEL ASSOCIATION shall be a MEMBER of the COMMUNITY ASSOCIATION. Such membership shall be established upon the filing of the articles of incorporation of the PARCEL ASSOCIATION with the Secretary of State of the State of Florida, and the recording of such articles of incorporation in the public records of the county in which the SUBJECT PROPERTY is located, along with, or as an exhibit to, a PARCEL DECLARATION.

4.1.2 DECLARANT. DECLARANT shall be a MEMBER of the COMMUNITY ASSOCIATION so long as DECLARANT owns any PROPERTY, or holds a mortgage encumbering any PROPERTY other than a UNIT.

4.2 MEMBERS' Voting Rights. The total number of MEMBERS' votes shall be equal to the total number of UNITS and PLANNED UNITS within the SUBJECT PROPERTY from time to time. On all matters upon which the membership shall be entitled to vote, there shall be one (1) vote for each UNIT and PLANNED UNIT.

4.2.1 Each PARCEL ASSOCIATION MEMBER shall have the number of votes equal to the number of UNITS within the PROPERTY operated by, or subject to the jurisdiction of, that PARCEL ASSOCIATION at the time of such vote. A PARCEL ASSOCIATION MEMBER shall cast its votes in the manner provided by the BYLAWS.

4.2.2 DECLARANT shall have three votes for each vote of any MEMBER other than DECLARANT, so long as DECLARANT is entitled to appoint a majority of the directors of the COMMUNITY ASSOCIATION, as hereafter provided, and thereafter DECLARANT shall have three votes for each UNIT and each PLANNED UNIT contained with the PROPERTY owned by DECLARANT, and contained within any portion of the property described in Exhibit "B" of the DECLARATION which may be added to the DECLARATION.

4.3 The BYLAWS shall provide for an annual meeting of the members of the COMMUNITY ASSOCIATION and shall make provision for special meetings.

ARTICLE 5. - TERM OF EXISTENCE

The COMMUNITY ASSOCIATION shall have perpetual existence.

ARTICLE 6. - INCORPORATOR

The name and street address of the incorporator is: Eric A. Simon, 2825 University Drive, Suite 300, Coral Springs, Florida 33065.

ARTICLE 7. - DIRECTORS

7.1 The property, business and affairs of the COMMUNITY ASSOCIATION shall be managed by a BOARD which shall consist of not less than three (3) directors, and which shall always be an odd number. The BYLAWS may provide for a method of determining the number of directors from time to time. In the absence of a determination as to the number of directors, the BOARD shall consist of three (3) directors. Directors are not required to be OWNERS.

7.2 All of the duties and powers of the COMMUNITY ASSOCIATION existing under the DECLARATION, these ARTICLES and the BYLAWS shall be exercised exclusively by the BOARD, its agents, contractors or employees, subject to approval by the members only when specifically required.

7.3 The DECLARANT shall have the right to appoint all of the directors so long as DECLARANT owns any portion of the SUBJECT PROPERTY or any property that may be added to the SUBJECT PROPERTY, or as otherwise provided by law. The DECLARANT may waive its right to elect one or more directors by written notice to the COMMUNITY ASSOCIATION, and thereafter such directors shall be elected by the members. When the DECLARANT no longer owns any portion of the SUBJECT PROPERTY or any property that may be added to the SUBJECT PROPERTY, all of the directors shall be elected by the members in the manner provided in the BYLAWS.

7.4 Directors may be removed and vacancies on the BOARD shall be filled in the manner provided by the BYLAWS, however any director appointed by the DECLARANT may only be removed by the DECLARANT, and any vacancy on the BOARD shall be appointed by the DECLARANT if, at the time such vacancy is to be filled, the DECLARANT is entitled to appoint the directors.

7.5 The names and addresses of the initial directors, who shall hold office until their successors are appointed or elected, are as follows:

Marc Schneiderman, 3300 University Drive, Coral Springs, Florida 33065
Maryann Crowell, 3300 University Drive, Coral Springs, Florida 33065
Cora DiFlore, 3300 University Drive, Coral Springs, Florida 33065

ARTICLE 8. - OFFICERS

The officers of the COMMUNITY ASSOCIATION shall be a president, vice president, secretary, treasurer and such other officers as the BOARD may from time to time by resolution create. The officers shall serve at the pleasure of the BOARD, and the BYLAWS may provide for the removal from

office of officers, for filling vacancies, and for the duties of the officers. The names of the officers who shall serve until their successors are designated by the BOARD are as follows:

President Marc Schneiderman
Vice President. Maryann Crowell
Vice President/Secretary/Treasurer. . . Cora DiFiore

ARTICLE 9.- INDEMNIFICATION

9.1 The COMMUNITY ASSOCIATION shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the COMMUNITY ASSOCIATION) by reason of the fact that he is or was a director, employee, officer or agent of the COMMUNITY ASSOCIATION, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the COMMUNITY ASSOCIATION; and with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful; except, that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duties to the COMMUNITY ASSOCIATION unless and only to the extent that the court in which the action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the COMMUNITY ASSOCIATION; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

9.2 To the extent that a director, officer, employee or agent of the COMMUNITY ASSOCIATION has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraph 1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

9.3 Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the COMMUNITY ASSOCIATION in advance of the final disposition of such action, suit or proceeding as authorized by the BOARD in the specific case upon receipt of an undertaking by or on behalf of the directors, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the COMMUNITY ASSOCIATION as authorized herein.

9.4 The indemnification provided herein shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any BYLAW, agreement, vote of members or otherwise, and as to action taken in an official capacity while holding office, shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

9.5 The COMMUNITY ASSOCIATION shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the COMMUNITY ASSOCIATION, or is or was serving at the request of the COMMUNITY ASSOCIATION as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, as arising out of his status as such, whether or not the COMMUNITY ASSOCIATION would have the power to indemnify him against such liability under the provisions of this Article.

ARTICLE 10. - BYLAWS

The first BYLAWS shall be adopted by the BOARD and may be altered, amended or rescinded by the DECLARANT, the Directors and/or members in the manner provided by the BYLAWS.

ARTICLE 11. - AMENDMENTS

Amendments to these ARTICLES shall be proposed and adopted in the following manner:

11.1 A majority of the BOARD shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members, which may be the annual or a special meeting.

11.2 Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote thereon within the time and in the manner provided in the BYLAWS for the giving of notice of a meeting of the members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

11.3 At such meeting, a vote of the members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the votes of the entire membership of the COMMUNITY ASSOCIATION.

11.4 Any number of amendments may be submitted to the members and voted upon by them at any one meeting.

11.5 If all of the directors and all of the members eligible to vote sign a written statement manifesting their intention that an amendment to these ARTICLES be adopted, then the amendment shall thereby be adopted as though the above requirements had been satisfied.

11.6 No amendment shall make any changes in the qualifications for membership nor in the voting rights of members without approval by all of the members and the joinder of all INSTITUTIONAL LENDERS holding mortgages upon the LOTS. No amendment shall be made that is in conflict with the DECLARATION. Prior to the closing of the sale of all LOTS within the SUBJECT PROPERTY, no amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, the DECLARANT, unless the DECLARANT shall join in the execution of the amendment, including, but not limited to, any right of the DECLARANT to appoint directors pursuant to Article VII.

11.7 No amendment to these ARTICLES shall be made which discriminates against any OWNER(S), or affects less than all of the OWNERS within the SUBJECT PROPERTY, without the written approval of all of the OWNERS so discriminated against or affected.

11.8 Upon the approval of an amendment to these ARTICLES, the articles of amendment shall be executed and delivered to the Department of State as provided by law, and a copy certified by the Department of State shall be recorded in the public records of the county in which the SUBJECT PROPERTY is located.

ARTICLE 12. - DISSOLUTION

In the event of dissolution or final liquidation of the COMMUNITY ASSOCIATION, the assets, both real and personal, of the COMMUNITY ASSOCIATION, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the COMMUNITY ASSOCIATION. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization, to be devoted to purposes as nearly as practicable to the same as those to which they were required to be devoted by the COMMUNITY ASSOCIATION.

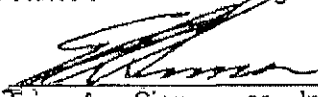
If the local government declines to accept the conveyance then the surface water management system, property containing the surface water management system and water management portions of the COMMON AREAS shall be dedicated to a similar non-profit corporation.

ARTICLE 13.

INITIAL REGISTERED OFFICE ADDRESS AND NAME OF REGISTERED AGENT

The initial registered office of the COMMUNITY ASSOCIATION shall be at 2825 University Drive, Suite 300, Coral Springs, Florida 33065. The initial registered agent of the COMMUNITY ASSOCIATION at that address is Eric A. Simon.

WHEREFORE, the incorporator, and the initial registered agent, have executed these ARTICLES on this 25th day of September, 2003. By executing these ARTICLES, the undersigned registered agent accepts the appointment as registered agent and states that the undersigned is familiar with, and accepts, the obligations of that position.


Eric A. Simon, as Incorporator and as
Registered Agent

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 25th day of September, 2003, by Eric A. Simon, as Incorporator and as Registered Agent. He is personally known to me.


NOTARY PUBLIC, State of Florida at Large



Cynthia S Voller
My Commission CC965666
Expires October 07 2004

FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA
03 SEP 26 PM 1:22

N03000008338

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

(Business Entity Name)

(Document Number)

Certified Copies _____ Certificates of Status _____

Special Instructions to Filing Officer:

Office Use Only



400022778754

09/26/03--01071--006 **78.75

DIVISION OF CORPORATION

03 SEP 26 PM 12:44

RECEIVED

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA
03 SEP 26 PM 1:22



CORPORATION SERVICE COMPANY™

ACCOUNT NO. : 0721000000032

REFERENCE : 257768 7109989

AUTHORIZATION :

COST LIMIT : ~~\$ 78.75~~ PPD

ORDER DATE : September 26, 2003

ORDER TIME : 11:42 AM

ORDER NO. : 257768-005

CUSTOMER NO: 7109989

CUSTOMER: Eric A. Simon, Esq
Eric A. Simon, P.a.

Suite 300
2825 University Drive
Coral Springs, FL 33065

DOMESTIC FILING

NAME: LAGUNA LAKES COMMUNITY
ASSOCIATION, INC.

EFFECTIVE DATE:

XX ARTICLES OF INCORPORATION
 CERTIFICATE OF LIMITED PARTNERSHIP
 ARTICLES OF ORGANIZATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY
 PLAIN STAMPED COPY
 CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Amanda Haddan - EXT. 1155

EXAMINER'S INITIALS: _____

LEE COUNTY CLERK OF COURT
FIRST FLORIDA TITLE SERVICES
ONE S. OCEAN BLVD. #308
BOCA RATON, FL 33432

(8)

#1



RECORD AND RETURN TO:
THIS INSTRUMENT PREPARED BY:

Eric A. Simon, Esquire
2825 University Drive, Suite 300
Coral Springs, Florida 33065

INSTR # 6077839
OR BK 04146 Pgs 3314 - 3315; (2pgs)
RECORDED 12/15/2003 09:04:58 AM
CHARLIE GREEN, CLERK OF COURT
LEE COUNTY, FLORIDA
RECORDING FEE 10.50
DEED DOC 0.70
DEPUTY CLERK A Janke

QUIT CLAIM DEED

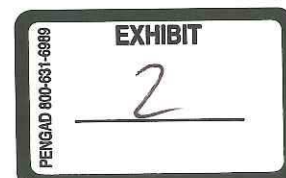
THIS INDENTURE, made this 02 day of DECEMBER, 2003, by and between TRANSEASTERN LAGUNA LAKES, LLC., a Florida limited liability company, whose address is 3300 University Drive, Coral Springs, Florida 33065 (Grantor), and LAGUNA LAKES COMMUNITY ASSOCIATION, INC., a Florida corporation not-for-profit, whose address is 3300 University Drive, Coral Springs, Florida 33065 (Grantee).

WITNESSETH: Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable considerations, to it in hand paid by Grantee, the receipt of which is hereby acknowledged, does hereby remise, release, and quit-claim to Grantee all of the right, title, interest, claim and demand which Grantor has in and to the following described real property located in Lee County, Florida, to-wit:

Tracts A, B, C, D, E, G, H, I, J, K, L, and R, of "LAGUNA LAKES", according to the Plat thereof recorded in Plat Book 74, at Page 1, of the Public Records of Lee County, Florida.

together with all of the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said Grantor, either in law or equity, to the only proper use, benefit and behoof of the said Grantee forever.

The property conveyed hereby is intended to be "Common Area" pursuant to the Master Declaration for Laguna Lakes, recorded in Official Records Book 4083, Page 1622, of the Public Records of Lee County, Florida.



IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

WITNESSES:

Jeremy Ickovic
Print Name:
JEREMY ICKOVIC
Print Name:

TRANSEASTERN LAGUNA LAKES, LLC., a
Florida limited liability company

By: TRANSEASTERN PROPERTIES, INC.,
a Florida corporation, its managing member


By: [Signature]

(Type/Print Name and Title)
3300 University Drive
Coral Springs, Florida 33065

STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 02 day of
DECEMBER, 2003, by _____, as
_____ of TRANSEASTERN PROPERTIES, INC., a Florida
corporation, managing member of TRANSEASTERN LAGUNA LAKES, LLC., a Florida limited
liability company, on behalf of the company. He/she is personally known to me or has produced
_____ as identification.

[Signature]
NOTARY PUBLIC

 Jeremy Ickovic
Commission #DD204142
Expires: Apr 16, 2007
Bonded Thru
Atlantic Bonding Co., Inc.

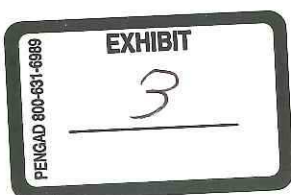


Jaime J. Buck
Certified Sales Professional



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Fort Myers, Florida 33908
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Toll Free (866) laguna5
Facsimile: (239) 481-5636
E-mail: jaimEB@Transeastern.com
www.lagunalak.es.com



UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposition No: 91204897
Opposition No: 91204941

JOHN G. MARINO

VS.

LAGUNA LAKES COMMUNITY
ASSOCIATION, INC.

_____ /

DEPOSITION OF: ROBERT ALLEN HAJICEK
DATE TAKEN: March 3, 2014
TIME: 2:08 P.M. until 3:07 P.M.
PLACE TAKEN: Von Ahn Associates, Inc.
13241 University Drive
Suite 104
Fort Myers, Florida
BEHALF OF: The Defendants
REPORTER: Karen K. Crawford, CSR, RPR
Notary Public
State of Florida at Large

VON AHN ASSOCIATES, INC.
Registered Professional Reporters
2271 McGregor Boulevard, Second Floor
Fort Myers, Florida 33901
Phone: (239) 332-7443 FAX: (239) 332-4066
Naples South Fort Myers Punta Gorda

APPEARANCES:

For the Plaintiff:

BEHREN LAW FIRM
2893 Executive Park Drive
Suite 110
Weston, Florida 33331

By: Scott M. Behren, Esquire

For the Defendant:

BRENNAN, MANNA & DIAMOND, LLC
75 East Market Street
Akron, Ohio 44308

By: Richard Annunziata, Esquire
Scott Harders, Esquire (Via telephone)

Also Present: John G. Marino

I N D E X

<u>ATTORNEY</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Mr. Behren	3			
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E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>MARKED</u>
1	Articles of Incorporation for Laguna Lakes Community Association, Inc.	5
2	Quit Claim Deed	6
3	Business Card	41

1 whereupon,

2 ROBERT ALLEN HAJICEK

3 acknowledged having been duly sworn to tell the truth
4 and testified upon his oath as follows:

5 THE WITNESS: Yes, I do.

6 DIRECT EXAMINATION

7 BY MR. BEHREN:

8 Q. Please state your name.

9 A. Robert Allen Hajicek.

10 Q. Can you spell that for the court reporter,
11 please?

12 A. R O B E R T.

13 Q. Not the Robert, how about the last name. I am
14 assuming she can handle Robert, correct?

15 A. H A J I C E K.

16 Q. You have already had your deposition taken
17 previously in this case; is that right?

18 A. That's right.

19 Q. You are familiar with the procedure, correct?

20 A. Yes.

21 Q. All right. And at this point in time you are
22 being produced at the 30(b)(6) witness of Laguna Lakes
23 Community Association, Inc., correct?

24 A. Yes.

25 Q. Okay. what did you review to prepare for your

1 deposition?

2 MR. HARDERS: Can you pause quickly?

3 MR. BEHREN: Yeah.

4 MR. HARDERS: Now that we are on the record
5 just for context this is the 30(b)(6) witness that
6 is provided pursuant to the board's February 3rd,
7 2014 order permitting additional disclosure of two
8 specific areas, one regarding applicant's first use
9 of his mark, and two information regarding any
10 transfer/assignments of the subject mark by
11 Transeastern Homes or any T O U S A entity to the
12 applicant.

13 I also want to just put on the record that we
14 received your deposition notice. I think it was
15 just an oversight, but the list of topics was
16 overbroad. We objected to that. And I think we
17 had previously agreed with the interlocutory
18 attorney on the phone that this deposition would be
19 limited to those two areas.

20 MR. BEHREN: Yes.

21 MR. HARDERS: I am off my soap box now. You
22 can go ahead and continue.

23 MR. BEHREN: Yeah, I agree, I think we were
24 clear with the examiner we were going to be limited
25 to these particular two areas, so that's what I'm

1 going to ask about.

2 BY MR. BEHREN:

3 Q. My last question was what did you review or do
4 to prepare -- what did you review to prepare for your
5 deposition here today as the corporate representative?

6 A. Well, the Articles of Incorporation, which were
7 filed with the state of Florida.

8 Q. Articles of Incorporation of what?

9 A. Of Laguna Lakes Community Association.

10 Q. Okay.

11 A. Filed with the state of Florida on
12 September 26, 2003. The Master Declaration for the
13 Laguna Lakes Community Association that was filed with
14 Lee County on October 6, 2003, and the Quit Claim Deed,
15 which was filed with -- I believe that was Lee County
16 also, and that was filed -- or it was recorded on
17 December 15, 2003.

18 Q. Which quit claim deed are we referring to?

19 A. It was maybe the 12th, I'm sorry. It was the
20 15th.

21 Q. So one of the things you reviewed was the
22 Articles of Incorporation for the Laguna Lakes Community
23 Association, Inc., filed September 26, 2003.

24 A. Right.

25 (Exhibit 1 marked for identification.)

1 Q. We marked that as Exhibit 1. It was previously
2 an exhibit to the other depositions. Do you recognize
3 that document?

4 A. What was your question?

5 Q. Is that the document you reviewed, the Articles
6 of Incorporation for Laguna Lakes Community Association?

7 A. Yes, but I did not see it during the last
8 deposition.

9 Q. Just for the record I'm identifying that it was
10 an exhibit to the first depositions.

11 A. I did not see it then.

12 Q. You saw it in preparation for the deposition
13 today?

14 A. Yes, that's right.

15 (Exhibit 2 marked for identification.)

16 Q. Exhibit 2 here is a quit claim deed dated
17 September 2, 2003.

18 A. Yes.

19 Q. From Transeastern Laguna Lakes, LLC to Laguna
20 Lakes Community Association, Inc.?

21 A. Yes. And that was when they transferred the
22 property. And the property would include intangible
23 assets as well, which would be the Laguna Lakes name.

24 Q. Where does it say that there was a transfer of
25 intangible assets there?

1 A. I have not seen that, but I have also not seen
2 a document that says it was not transferred.

3 Q. Okay. You would agree that in Exhibit Number 2
4 there is nothing about the transfer of any intangible
5 assets, correct?

6 A. I agree there was nothing that I saw that was
7 also a document that did not transfer it.

8 Q. Okay. Sir, this could be a very short
9 deposition or it could be a very long deposition, if you
10 are not going to answer my questions, okay?

11 A. Uh-huh.

12 Q. The question is isn't it true that Exhibit 2
13 references nothing about the transfer of intangible
14 assets from Transeastern Laguna Lakes, LLC to Laguna
15 Lakes Community Association, Inc.?

16 A. Common sense would only say that all of the
17 documents that are called Laguna Lakes from the
18 beginning of the Articles of Incorporation, to the
19 declarations, to the quit claim deed, all include Laguna
20 Lakes.

21 Q. Sir --

22 A. And common sense would say it traveled right
23 along to the Laguna Lakes Community Association.

24 Q. Okay. So basically rather than relying upon
25 the law, your case -- your defense now relies upon

1 common sense?

2 A. I'm just saying --

3 MR. HARDERS: Objection.

4 MR. ANNUNZIATA: Object.

5 MR. HARDERS: You are kind of badgering. He is
6 not an attorney. He is telling you what he
7 reviewed and what his understanding is.

8 MR. BEHREN: I understand that. Like I said,
9 this could be a quick deposition, if he answers the
10 questions.

11 MR. HARDERS: He has answered your question.

12 MR. BEHREN: No, he hasn't answered the
13 question.

14 BY MR. BEHREN

15 Q. It's a simple question. Yes or no, isn't it
16 true that Exhibit 2 does not reference the transfer of
17 any intangible assets?

18 A. I do not see that.

19 Q. Thank you. Now so you reviewed that. You
20 reviewed the articles. You reviewed the master
21 declaration. By the way -- what was -- according to
22 Exhibit 2 what was actually transferred from
23 Transeastern Laguna Lakes, LLC to Laguna Lakes Community
24 Association, Inc.?

25 A. The property and the assets.

1 Q. Okay. It doesn't reference the assets here,
2 does it? Sir, you can answer the question.

3 A. Show it to me and I will look at it.

4 MR. ANNUNZIATA: He hasn't been looking at the
5 document during the questioning.

6 BY MR. BEHREN:

7 Q. It references the fact that tracks A, B, C, D,
8 E, G, H, I, J, K, L and R were being transferred, along
9 with tenements, hereditaments and appurtenances thereto,
10 correct, that's what it references there in Exhibit 2?

11 A. Yes, that's what it says.

12 Q. Do you know what those tracts are, tracts A, B,
13 C, D, E, G, H, I, J, K, L and R?

14 A. Probably not without looking at the plat.

15 Q. Okay. So you have no idea at all?

16 A. As far as what they are?

17 Q. Yeah.

18 A. I presume that it's all of that is encompassed
19 currently in Laguna Lakes Community Association, which
20 is bordered by Bass Road, by Gladiolus, the rear which
21 would be to the south fence and to the east a fence
22 along the electric line easement.

23 Q. You would agree that all that would have been
24 transferred would have been the common elements,
25 correct?

1 A. No.

2 Q. You think that individual property owners'
3 properties were transferred also to Laguna Lakes?

4 A. No. No.

5 Q. It was the common elements, correct?

6 A. Common elements, okay.

7 Q. Yes, that's a fair statement?

8 A. Yes.

9 Q. Okay. What about -- you would agree that not
10 all of the common elements were transferred from
11 Transeastern Laguna Lakes, LLC to Laguna Lakes Community
12 Association, Inc., correct?

13 A. No, I wouldn't agree to that.

14 Q. Have you ever heard of the Laguna Lakes
15 Community Development District?

16 A. Yes.

17 Q. Okay. You would agree that that also owns
18 certain common elements of Laguna Lakes, correct?

19 A. That -- I would not know that. I am not an
20 attorney.

21 Q. So you have no idea?

22 A. I wouldn't say I have no idea. I say CDD
23 manages the lakes. And there have been some agreements
24 since the original -- since the original declarations
25 that have changed responsibilities between LLCA and CDD.

1 Q. Okay. Do you know what -- so you don't know
2 what CDD owns, do you?

3 A. As far as ownership of it is concerned, no, I
4 would not say I do.

5 Q. So when is it that you contend that the -- was
6 the date of first use of the Laguna Lakes logo and name
7 mark by Laguna Lakes Community Association?

8 A. I would say it was probably as early as when
9 the incorporation took place.

10 Q. So you're talking about the articles of
11 incorporation in September of 2003?

12 A. 2003.

13 Q. At that point in time how was Laguna Lakes
14 using either the logo mark or the trademark in commerce?

15 A. Well, they were using the name.

16 Q. How were they using it in interstate commerce?

17 A. Well, there were people from out of state that
18 were interested in buying properties.

19 Q. But Laguna Lakes wasn't selling properties to
20 anybody at that time, were they?

21 A. That's right.

22 Q. So again, you would agree that as of September
23 of 2003 that Laguna Lakes Community Association's
24 responsibilities were to collect assessments and
25 maintain the common areas, correct?

1 MR. HARDERS: Objection. Go ahead, Bob.

2 A. Well, it's my understanding a nonprofit
3 organization doesn't have to be engaged in interstate
4 commerce.

5 BY MR. BEHREN:

6 Q. So you think that then a nonprofit corporation,
7 if they are not engaged in interstate commerce, can
8 still maintain a trademark?

9 MR. HARDERS: Objection.

10 Q. Are you aware a trademark has to be utilized in
11 interstate commerce?

12 MR. HARDERS: Objection.

13 MR. ANNUNZIATA: Objection.

14 Q. Are you aware of that?

15 A. He said objection.

16 Q. I understand that, but unless he directs you
17 not to answer the question, you can answer.

18 A. And what was the question?

19 Q. Are you aware whether a trademark to be
20 registered has to be utilized in interstate commerce?

21 MR. ANNUNZIATA: Again, objection for the
22 record.

23 MR. BEHREN: And by the way, I am only going to
24 let one of you object. So one of you guys needs to
25 pick who is going to object. I am not going to

1 have dualing objections here.

2 MR. ANNUNZIATA: He's lead counsel so he will
3 follow, but if I find the need to object, I will
4 object.

5 MR. BEHREN: I think lead counsel that needs to
6 make the objections.

7 MR. ANNUNZIATA: We will do it in a way that's
8 not disruptive, but I am not going to give up the
9 right to object.

10 MR. HARDERS: And Mr. Behren, this is all a
11 little bit -- I mean I have been generous just
12 objecting to let the witness answer, but this is
13 outside of the scope of those narrow two
14 limitations. Use in commerce is not one of the
15 things we are talking about here. It is use and
16 assignment.

17 MR. BEHREN: Well, I understand that. I think
18 that certainly the first use of the subject marks
19 would have to be in commerce as representing the
20 trademark application.

21 MR. HARDERS: I disagree.

22 BY MR. BEHREN:

23 Q. Did anybody represent from Laguna Lakes in the
24 trademark application that the Laguna Lakes marks were
25 being used in commerce?

1 MR. HARDERS: Objection. The trademark
2 applications you are talking about now.

3 MR. BEHREN: That's what the entire lawsuit is
4 about is the trademark applications.

5 Q. Sir, do you know whether or not on the
6 trademark applications there was reference to use of the
7 Laguna Lakes marks in interstate commerce?

8 MR. HARDERS: Objection.

9 MR. BEHREN: You can answer the question, sir?

10 A. Can I answer the question.

11 Q. Yes, unless he tells you not to answer it.

12 A. I don't know.

13 Q. You would agree that as of September of 2003
14 that Laguna Lakes Community Association was not using
15 the logo or name mark in interstate commerce, correct?

16 MR. HARDERS: Objection. Go ahead.

17 A. Well, they were using it from the standpoint of
18 enticing people to purchase property in the community.

19 Q. They weren't selling property to anybody at
20 that point in time, were they?

21 A. We don't know that.

22 Q. Isn't it true that as of that point in time
23 Transeastern was still selling the properties?

24 A. Well, that's right. And Transeastern and
25 Laguna Lakes were using -- they were using the name on

1 their literature.

2 Q. Laguna Lakes -- what literature was Laguna
3 Lakes using the name on?

4 A. well, from your previous deposition with
5 Mr. Tardiff you showed a whole range of materials,
6 selling materials, that Transeastern used in which they
7 used Laguna Lakes' name on it.

8 Q. That Transeastern used, exactly. So the
9 question is what materials as of 2003 was Laguna Lakes
10 Community Association using either the name or the logo
11 mark on?

12 A. well, if we were not selling anything, then we
13 would not have been.

14 Q. You weren't selling anything at that point in
15 time, correct?

16 A. we don't -- as I say, we don't have to be
17 selling anything.

18 Q. You don't sell anything, correct?

19 A. well, as I said to you once before, we sell
20 soda pop, we sell water, and we sell chips, but we also
21 sell the intrinsic value of being able to be in Laguna
22 Lakes, the property value.

23 Q. Okay. You don't sell anything -- again, the
24 association according to the Articles of Incorporation
25 their responsibilities are to manage the common areas

1 and collect assessments, correct?

2 A. And protect the assets of the community, of
3 which the name is one.

4 Q. well, they would have had to own the name or
5 the asset or the logo, correct?

6 A. well, apparently they did, since there was no
7 Laguna Lakes before there was Laguna Lakes. Even in
8 Mr. Marino's testimony he said it was a field with cows
9 in it. So there was no name before the incorporation.

10 Q. By the way, was the LLCA selling soda and
11 popcorn in December of 2003?

12 A. No. No.

13 Q. when did they start first selling soda and
14 popcorn?

15 A. Oh, probably two or three years ago.

16 Q. Okay. Now with regard to -- what knowledge do
17 you have with regard to transfers or assignments of the
18 subject marks, the Laguna Lakes name and logo, by
19 Transeastern Homes or any other TOUSA entity to Laguna
20 Lakes Community Association?

21 A. I have no knowledge. I have not found that in
22 any of the research that I have done. Just as I have
23 not found any document that says -- that prohibited the
24 transfer. And obviously, since Laguna Lakes has been
25 the name of it since the beginning through the

1 declarations, through the quit claim deed, that name has
2 always been with Laguna Lakes.

3 Q. Well, the name was with Transeastern, correct?
4 Transeastern was the one using it in commerce to sell
5 real estate?

6 A. Transeastern was using it?

7 Q. Right?

8 A. Transeastern, yes. Which is understandable,
9 because they wanted to sell property in Laguna Lakes.

10 Q. And then TOUSA was using it because --

11 A. They wouldn't have called it a cow patch.

12 Q. Transeastern was using it and then TOUSA was
13 using it, correct?

14 A. I don't know that TOUSA was using it.

15 MR. HARDERS: Objection. Go ahead, Bob.

16 A. I don't know that TOUSA was using it.

17 BY MR. BEHREN:

18 Q. Just to make sure things are -- you're saying
19 you have researched the issue with regard to the
20 transfer and assignments of the marks or the
21 intellectual property from Transeastern or TOUSA to
22 Laguna Lakes Community Association and have been able to
23 find nothing to transfer the evidence of that
24 intellectual property, other than your claim of common
25 sense, correct?

1 A. Other than the fact that it is an intangible
2 asset. Intangible assets go along with assets of a
3 corporation. And also because of the fact that the name
4 -- the name of Laguna Lakes has always been with Laguna
5 Lakes, and there is no documentation that withheld the
6 name of Laguna Lakes from going to Laguna Lakes
7 Community Association at that time, it is just common
8 sense that it would have gone over.

9 Q. Okay. Just to clarify again to the use of the
10 name Laguna Lakes and the logo those were being used by
11 -- as corporate assets of Transeastern, correct?

12 A. And Transeastern.

13 MR. HARDERS: Objection.

14 A. Pardon me.

15 MR. ANNUNZIATA: What was that, Scott?

16 MR. HARDERS: Just an objection. Go ahead and
17 answer.

18 A. Other than Transeastern also controlled the
19 Laguna Lakes board at that time. There were no property
20 owners from Laguna Lakes, that is homeowners that were
21 on the board, so there would not have been a voice. And
22 there was strictly a deal between the board, which was
23 controlled by Transeastern and Transeastern.

24 Q. Okay. But again, the intellectual property
25 assets that would have gone with the corporation were

1 belonging to Transeastern, correct?

2 MR. HARDERS: Objection.

3 MR. ANNUNZIATA: Object to form.

4 Q. Correct?

5 A. Say that again.

6 Q. Could you read back that last question, please?

7 (Record read.)

8 A. You said would have gone. They did go.

9 Q. Okay. They belonged to Transeastern, and
10 Transeastern continued to use these marks for years
11 after September of 2003, correct?

12 MR. HARDERS: Objection.

13 A. They had it on their sales literature.

14 Q. They continued to use the logo and the name on
15 all of their sales literature well beyond September of
16 2003, correct?

17 A. To my knowledge.

18 Q. When did they stop selling in Laguna Lakes?

19 MR. ANNUNZIATA: Object to form.

20 Q. When did Transeastern stop selling in Laguna
21 Lakes?

22 A. The exact date?

23 Q. Approximately. I'm not asking you -- I don't
24 expect you to know the exact date.

25 A. I really don't know the exact date.

1 Q. I'm not asking for an exact date. I said
2 approximately.

3 A. well, approximately maybe the end of 2005.

4 Q. Did Laguna Lakes Community Association between
5 2003 and 2005 ever tell Transeastern that they weren't
6 allowed to use the name or the logo because Laguna Lakes
7 Community Association was the owner of it?

8 A. well, that's hardly a serious question because
9 they controlled the Laguna Lakes board.

10 Q. You would agree they are not --

11 A. They had their own people on the board, so what
12 do you think that they would have said? Let's put it
13 this way, I don't want to ask you a question. It only
14 stands to reason that there was an interrelationship
15 between Transeastern Corporation and Laguna Lakes
16 Community Association Board.

17 Q. You understand, sir, they are two separate
18 legal entities, correct?

19 A. Oh, yes. Have you ever heard of interlocking
20 boards?

21 Q. Just because there's some common ownership you
22 would agree that it doesn't mean the legal entities get
23 disregarded, right?

24 MR. HARDERS: Objection.

25 A. That's a serious question I take it?

1 Q. Yeah, it's a serious question.

2 A. Well, a lot of things happen that can happen
3 outside of the legal ramifications of relationships.

4 Q. I understand that. But the bottom line is that
5 you would agree they were separate legal entities,
6 correct?

7 A. On paper they were.

8 Q. Okay. Where was the -- are you aware of any
9 transfer from any entity of either Laguna Lakes or the
10 Laguna Lakes logo to the Laguna Lakes Community
11 Association?

12 A. I believe I have answered that.

13 Q. Now with regard to the logo, where was the
14 first time -- when was the first time that Laguna Lakes
15 Community Association used a logo?

16 A. Specifically?

17 Q. Yeah.

18 A. The specific date? I don't know the specific
19 date.

20 Q. How was the first time that it used the logo,
21 the association?

22 A. In what form?

23 Q. Yeah.

24 A. Well, it certainly was on the wall of the entry
25 wall of the Laguna Lakes.

1 Q. You are talking about the monument signs,
2 right?

3 A. Yes.

4 Q. Those monument signs are they owned by Laguna
5 Lakes Community Association?

6 A. The monument signs?

7 Q. Yes.

8 A. The monument signs -- the signs on the monument
9 are owned by Laguna Lakes. The walls may be the
10 responsibility of CDD.

11 Q. Isn't it true that the walls and the monument
12 signs are all owned by CDD?

13 MR. HARDERS: Objection.

14 A. That they are all owned by CDD?

15 Q. Yes.

16 A. Yes, but however the logo and the name are not.

17 Q. Okay. My point is the monument sign that has
18 the logo on them, the monument signs that have the logo
19 on them, those are owned and maintained by Laguna Lakes
20 Community Development District, correct?

21 A. I don't know that.

22 Q. Okay. You would agree that Laguna Lakes
23 Community Development District is a separate entity from
24 Laguna Lakes Community Association, Inc., right?

25 A. It is.

1 Q. Do they have interlocking boards?

2 A. There may be people on the board of CDD that
3 are on other boards of other parcel boards.

4 Q. But they are still separate entities and
5 separate legal fictions are observed, correct?

6 A. Yes, they are.

7 MR. BEHREN: I am going to speak with my client
8 for a couple of minutes. I will be back.

9 (Break.)

10 BY MR. BEHREN:

11 Q. Do you know when the monument signs were first
12 created?

13 A. No.

14 Q. Approximately?

15 A. No.

16 Q. Was it before or after the filing of the
17 Articles of Incorporation?

18 A. I said I don't know.

19 Q. Okay. Would you agree that -- is it your
20 contention that the first use in commerce of Laguna
21 Lakes both the name and the logo was on these monument
22 signs?

23 A. Not necessarily, no.

24 Q. Okay. Certainly would be the first use of the
25 logo by the association, right?

1 A. I don't know that.

2 Q. Where was the logo used by the association
3 prior to the monument signs?

4 A. I don't know.

5 Q. Where was the name Laguna Lakes used prior to
6 the monument signs?

7 A. Well, on all of the documents that we have been
8 talking about this morning -- this afternoon.

9 Q. So on the Articles of Incorporation. Where
10 else?

11 A. Well, it was on the Master Declaration.

12 Q. Okay.

13 A. It was on the Quit Claim Deed.

14 Q. Just the name, the name of the entity, correct?

15 A. The name of the entity.

16 Q. So is it your contention that the mere fact
17 that you all -- that there was an entity created named
18 Laguna Lakes Community Association is it your contention
19 that that was the first use in commerce of the Laguna
20 Lakes name?

21 A. It's the first time it appeared because there
22 wasn't a Laguna Lakes before that.

23 Q. The question is do you contend that the
24 formation of this corporate name and the use of this
25 corporate name was the first use in commerce of Laguna

1 Lakes Community Association?

2 A. I answered that question just a second ago.

3 Q. Is that a yes then?

4 A. I answered the question a second ago.

5 Q. Can you answer it again because I didn't hear
6 the answer amongst your last answer.

7 A. I said it was used from the very beginning
8 because there was no Laguna Lakes before the Articles of
9 Incorporation. So how could it have been used, if it
10 wasn't existing?

11 MR. BEHREN: This is not about you asking me
12 questions.

13 THE WITNESS: I'm sorry, I shouldn't have
14 phrased it that way.

15 MR. BEHREN: Can you do me a favor, please, and
16 read back the last question for him?

17 (Record read.)

18 A. And the answer is that it didn't exist before
19 the incorporation. There was no Laguna Lakes before
20 that, so how could it have been used in commerce?

21 Q. Okay. So then your answer to my question is
22 yes?

23 A. I just answered your question.

24 Q. I need a yes or no, not a --

25 A. Do I have to give a yes or no?

1 MR. ANNUNZIATA: Asked and answered. He did
2 answer your question.

3 Q. Is the answer to my question then yes?

4 MR. ANNUNZIATA: Objection.

5 A. No. I am going to answer it the same way I
6 did, Laguna Lakes did not exist before the
7 incorporation, therefore, it couldn't have been used
8 before then.

9 Q. So it's your contention that the first use of
10 Laguna Lakes' mark in commerce, the name mark, is the
11 formation of the corporation, correct?

12 MR. HARDERS: Objection. Again, he has
13 answered it to his ability you. He is trying to
14 fully answer the question. It might not be
15 amenable to a yes or a no.

16 MR. BEHREN: I am not going to let you make
17 speaking objections either, Scott.

18 Q. So again -- so you would agree then that
19 basically the creation of the association you're
20 claiming is the first use in commerce of Laguna Lakes?

21 MR. HARDERS: Objection, asked and answered.

22 Q. Sir?

23 A. What was the last thing you said, Scott.

24 Q. You can answer the question. He is not
25 instructing you not -- he is not instructing the

1 witness not to answer and I am not going to let two
2 people speak.

3 A. Repeat it one more time, Mr. Behren.

4 Q. I want you to answer the question and not
5 answer it with another, you know, like question.

6 MR. ANNUNZIATA: For the record --

7 MR. BEHREN: It's not a response -- he didn't
8 respond to my question.

9 MR. ANNUNZIATA: He answered it three times.

10 MR. BEHREN: No, actually he didn't. And again
11 I am not going to let you both speak.

12 MR. ANNUNZIATA: You know what --

13 MR. BEHREN: No, no, no.

14 MR. ANNUNZIATA: Yes, yes, yes. We are going
15 to represent him.

16 MR. BEHREN: It's going to have to be one or
17 the other, one of the two of you is going to speak,
18 not both of you, all right?

19 MR. ANNUNZIATA: We will make objections as
20 appropriate.

21 MR. HARDERS: Do you have another avenue?

22 BY MR. BEHREN:

23 Q. You said that the -- that the use of Laguna
24 Lakes in commerce could not have been before formation
25 of the corporation because it hadn't been formed yet,

1 correct?

2 A. That's correct.

3 Q. So my question is is it your contention that
4 the first use of in commerce of Laguna Lakes was when
5 the corporation or the legal entity was formed?

6 MR. HARDERS: Objection.

7 A. well --

8 Q. You can answer the question, sir.

9 A. I did answer the question.

10 Q. You didn't answer the question.

11 A. well, not to your satisfaction.

12 Q. I don't want to have to go back again to the
13 examining attorney here and show him that you guys are
14 just, you know, playing games and not answering the
15 question. It's a very simple question. Please answer
16 the question.

17 MR. ANNUNZIATA: Object to the characterization
18 of opposing counsel are playing games and not
19 answering the questions. The questions have been
20 asked and they have been answered.

21 MR. BEHREN: No, they haven't been answered;
22 that's the problem.

23 MR. ANNUNZIATA: Yes, they have been answered.

24 BY MR. BEHREN:

25 Q. Please answer the question.

1 MR. HARDERS: Objection. We are going to
2 continue answering the same question the same way.

3 BY MR. BEHREN:

4 Q. When is it you claimed that Laguna Lakes first
5 used the Laguna Lakes -- when is it that you -- when is
6 it that you contend the Laguna Lakes Community
7 Association, Inc. first used the Laguna Lakes name in
8 commerce?

9 A. Is that the full question again?

10 Q. That's the question. It's a different question
11 than the last time, so hopefully you will have a
12 different answer.

13 A. The answer that it could not have been used in
14 commerce until the Articles of Incorporation were filed
15 because there was no name before that.

16 Q. So when, when -- Gerard, write notes, don't
17 speak.

18 A. The 26th of September, 2003 then.

19 Q. Okay. The 26th of September 2003 when the
20 corporation was formed is when you contend was the first
21 use in commerce, correct?

22 A. I didn't say that. I said it could not have
23 been used before that if it was -- if the name was
24 created for the community.

25 Q. Sir, then when was it? You were designated

1 here to be the person who would testify about the first
2 use of the Laguna Lakes name in commerce.

3 MR. HARDERS: Objection.

4 Q. So when was it, sir? When?

5 A. You are badgering me. I have answered the
6 question.

7 Q. Sir, you haven't answered the question.

8 MR. ANNUNZIATA: For the record I would like
9 the tone to come down to a more straightforward
10 questioning kind of a tone.

11 MR. BEHREN: It was a very straightforward
12 question, because this is basically now what you
13 have been ordered to produce somebody about twice
14 in this case.

15 Q. The question again is when do you claim was the
16 first use of the Laguna Lakes name in commerce by the
17 Laguna Lakes Community Association, Inc.?

18 MR. HARDERS: Objection.

19 BY MR. BEHREN:

20 Q. You can answer the question, sir.

21 A. I answered it.

22 Q. You didn't answer it.

23 A. According to you.

24 MR. HARDERS: Objection.

25 Q. When was it?

1 A. I just explained to you.

2 Q. You didn't explain it.

3 MR. HARDERS: Objection. You are really --
4 Scott, is --

5 MR. BEHREN: No, he hasn't given a date yet. I
6 want a date, okay? The fact that he's telling me
7 that it couldn't have been used before the filing
8 of the Articles of Incorporation says nothing
9 because he is not saying it was the date of the
10 Articles of Incorporation. So he needs to answer
11 the flip'n question. This is the second time now
12 we have asked for a date. You guys represented in
13 your trademark application you started using it on
14 a certain date, so give me the date it was being
15 used according to this corporate representative who
16 supposedly has now been educated as to what the
17 first date of its use in commerce was.

18 MR. HARDERS: I object to the whole tone and
19 characterization. I mean we -- on our trademark
20 application there was a date that is at least as
21 early as date. A lot of times it's difficult to --
22 a definite date certain, and he's trying to give
23 you the information that he has from the review of
24 the documents that he has made about when the first
25 use could have been.

1 MR. BEHREN: He is not giving me. He is saying
2 it was definitely not before September of 2003;
3 that's not an answer. That's definitely not what
4 the examiner envisioned when he asked you guys to
5 come back here again and give a more definitive
6 answer on it.

7 MR. HARDERS: I disagree with your mind reading
8 of what the interlocutory attorney was saying. He
9 has answered the question to the best of his
10 ability I think probably a half dozen times or
11 better.

12 BY MR. BEHREN:

13 Q. Let's just clarify this then. So it's your
14 testimony that the first use of Laguna Lakes in commerce
15 was not prior to -- was not prior to September 26, 2003,
16 but you cannot give a more definitive date when it was
17 used; is that your testimony?

18 A. Yes.

19 Q. Okay. So other than sometime after September
20 2003 there would be no ability to pinpoint when or how
21 it was used in commerce?

22 MR. HARDERS: Objection.

23 A. There would be no ability to know that?

24 Q. I'm asking you.

25 A. Well, I don't know.

1 Q. With regard to the logo, who created the logo?

2 A. It must have been created by Transeastern.

3 Q. With regard to -- do you know what the main
4 name Transeastern used to market Laguna Lakes?

5 MR. HARDERS: Objection.

6 A. Well, what -- I -- what does domain name have
7 to do with what we are talking about?

8 Q. Well, it has to do with the use of the mark in
9 commerce. So the question is what domain name did
10 Transeastern use?

11 MR. HARDERS: Objection. Go ahead, Bob.

12 A. I would have to -- I don't know exactly.

13 Q. Okay. Would you agree that Transeastern used
14 Laguna Lakes -- www.LagunaLakes.com?

15 A. Is that what you are looking at on that piece
16 of literature?

17 Q. Well, I am asking the question. Would you
18 agree that that's the domain name?

19 MR. HARDERS: Objection.

20 MR. ANNUNZIATA: Is there --

21 BY MR. BEHREN:

22 Q. You can answer the question.

23 A. I would have to see that.

24 MR. HARDERS: Are we introducing a new exhibit
25 at this point?

1 MR. BEHREN: Yes.

2 MR. ANNUNZIATA: Can I look at it before you
3 show it to him? Scott, he is showing a card that
4 has Laguna Lakes on it, it is from a Jamie J.
5 Bucks, Certified Sales Professional. It lists
6 www.Laguna Lakes.com at the bottom. And it looks
7 like it's a card -- it has Transeastern Homes Built
8 with Pride logo on it, okay? I am going to take a
9 picture of it and send it to you. It has a Laguna
10 Lakes logo on it as well it appears. You will have
11 this in one second, Scott.

12 MR. HARDERS: Okay. Thank you.

13 A. Okay.

14 MR. ANNUNZIATA: Just wait until Scott gets it,
15 please. It is sent to you, Scott.

16 MR. HARDERS: I'm looking right now.

17 MR. ANNUNZIATA: I just hit send. You should
18 have it in any minute.

19 MR. HARDERS: There it is.

20 MR. BEHREN: I heard the beep on the other end.

21 BY MR. BEHREN:

22 Q. So showing you now what I'm going to mark as
23 Exhibit 3, and I am not going to mark this card, we will
24 make a photocopy of it, did you know this James Buck,
25 sales professional at Laguna lakes?

1 A. I don't recall that name.

2 Q. Was 9319 Spring Mountain Lake do you know what
3 address that is?

4 A. That is in the Monterey parcel.

5 Q. Okay. Do you know if that's where the sales
6 offices were for Laguna Lakes when Transeastern was
7 selling properties?

8 A. No, I don't know that.

9 Q. And would that card at all refresh your
10 recollection about what domain name Laguna Lakes -- I
11 mean Transeastern was using for Laguna Lakes?

12 A. It says LagunaLakes.com.

13 Q. As far as you know, has Laguna Lakes Community
14 Association ever acquired that domain name?

15 A. No, they have not.

16 Q. And you would agree also --

17 A. But I don't know that.

18 Q. Okay. You would agree also on this card here
19 is the Laguna Lakes logo that you all applied for a
20 trademark on, correct?

21 A. That's right.

22 Q. And that's the one that's on the monument
23 signs, correct?

24 A. Yes, it is.

25 Q. And other than on the monument signs, I think

1 my recollection was that you didn't know anywhere else
2 where the community association was using that
3 particular logo?

4 A. It is being used on the parcel signs.

5 Q. But the parcels are not the same thing as the
6 Laguna Lakes Community Association, correct?

7 A. They are part of it.

8 Q. They are separate entities, correct?

9 A. They are separate entities, but they are under
10 the master declarations.

11 Q. They are separate entities. They didn't apply
12 for this particular trademark, correct?

13 A. No, they did not.

14 Q. They used that particular logo on entries to
15 the parcels?

16 A. Yes, they do.

17 Q. Okay. Is there some type of documentation
18 whereby the Laguna Lakes Community Association has given
19 them permission to use that logo?

20 A. No, other than the fact that they are part of
21 the -- the master is responsible for the master
22 declarations, they are part of the LL -- they are part
23 of Laguna Lakes, and so that would be logical that they
24 could use that on their monument sign.

25 Q. As far as you know, the Laguna Lakes Community

1 Association has never stopped any of the parcel
2 associations from using that logo, correct?

3 MR. HARDERS: Objection.

4 A. Not to my knowledge. But what I will say is
5 this is very nice. It's very nice. And Transeastern's
6 name is on here as well. So obviously Transeastern
7 again would have had the ability to transfer this along
8 with other assets to LLCA.

9 Q. That's your belief. You believe that
10 Transeastern would have had the ability to transfer
11 assets, correct?

12 A. Because it's an intangible asset and it goes
13 along with everything that they transferred on the Quit
14 Claim Deed.

15 Q. Something actually has to be transferred to
16 somebody. They just don't automatically inherit it,
17 correct?

18 MR. HARDERS: Objection.

19 A. The Quit Claim Deed transfers it.

20 Q. Transfers real estate there, correct? The Quit
21 Claim Deed sets out specific parcels of property and
22 things attached to that property as being transferred,
23 correct?

24 MR. HARDERS: Objection.

25 A. They transferred assets to us.

1 Q. They transferred real estate, correct?

2 A. They transferred assets to us.

3 Q. Where does it reference assets in that
4 particular quit claim? It just references real estate,
5 right?

6 A. It doesn't have to. It's an intangible asset.

7 Q. The quit claim references real estate, correct?

8 MR. HARDERS: Objection.

9 A. What are tenements?

10 Q. What's that?

11 A. What are tenements?

12 Q. Attachments to real estate.

13 A. Okay. What's the other word? I can't even
14 pronounce it.

15 Q. Those are all attachments to real estate. Is
16 there anything there that is not pertaining to real
17 estate?

18 MR. ANNUNZIATA: Answer the question as
19 presented to you.

20 A. What's the question again?

21 Q. That Quit Claim Deed transfers real estate,
22 correct?

23 A. Uh-huh.

24 Q. Yes, right?

25 A. Well, it transfers -- yes, and real estate is

1 assets.

2 Q. Okay. Let me have that card, please.

3 A. By the way, I would like the card -- that's
4 very good. And so Transeastern was using the logo, and
5 that's very nice. When they transferred assets, they
6 certainly would have transferred the logo as well.

7 MR. ANNUNZIATA: Just answer the question.

8 Q. Transeastern was using the name, and the logo
9 and the website in commerce to sell homes, right?

10 A. Yes.

11 Q. And Transeastern was not the same as Laguna
12 Lakes Community Association, correct?

13 A. That's correct.

14 Q. And you don't have any documentation reflecting
15 the transfer of the name or the logo or the domain name
16 from any Transeastern entity to Laguna Lakes Community
17 Association, correct?

18 MR. HARDERS: Objection.

19 A. I answered that before, and I said there are no
20 documents that indicate it was not transferred.

21 Q. Right. And you have no documents to indicate
22 that the Laguna Lakes Community Association owns the
23 monument signs that the logos are displayed on, correct?

24 A. It owns the logo and the name.

25 Q. well, the monument signs have the logo on them.

1 The monument signs are not owned by Laguna Lakes
2 Community Association, are they?

3 A. CDD.

4 Q. Correct. If the name and the logo was
5 transferred to Laguna Lakes Community Association, can
6 you tell me why it is that Mr. Marino owns the website
7 that belonged to Transeastern?

8 MR. HARDERS: Objection.

9 A. Can I answer that question?

10 Q. You can. Unless he tells you not to answer a
11 question, you can answer it.

12 A. What was your question again.

13 Mr. Behren: Can you read back the question,
14 please?

15 (Record read.)

16 A. I believe he has appropriated it.

17 Q. Have you guys ever told him that he
18 appropriated that particular domain name?

19 A. This is all part of what we're doing with the
20 trademark.

21 Q. Isn't it true there was a representation made
22 in the trademark application that Laguna Lakes Community
23 Association owned the domain name LagunaLakes.com? Are
24 you aware of that?

25 A. No, I'm not aware of that.

1 MR. HARDERS: Objection.

2 MR. BEHREN: All right. Just give me one more
3 minute.

4 (Break.)

5 BY MR. BEHREN:

6 Q. A few final questions here. With regard to the
7 domain name -- by the way, let me mark that exhibit as
8 Exhibit 3, which will be a copy of the business card.

9 (Exhibit 3 marked for identification.)

10 With regard to the domain www.LagunaLakes.com,
11 did Mr. Marino purchase that domain name from Laguna
12 Lakes Community Association?

13 MR. HARDERS: Objection.

14 Q. You can answer, sir.

15 A. Not to my knowledge. I think he just took it.

16 Q. And now just to clarify again with regard to
17 what the -- you were ordered to testify about, with
18 regard to applicant's first use of subject marks, it's
19 your testimony that it was no earlier than September of
20 2003, but you cannot pinpoint an exact date, correct?

21 MR. HARDERS: Objection.

22 A. Yes.

23 BY MR. BEHREN:

24 Q. Information regarding any transfers or
25 assignments of the subject marks by Transeastern Homes

1 or any TOUSA entity to Laguna Lakes Community
2 Association it's your testimony that you have no such
3 documentation?

4 A. I have no such documentation, but I also have
5 no such documentation that prohibits it.

6 MR. BEHREN: All right. I don't have anything
7 further.

8 MR. HARDERS: We don't have anything either.

9 MR. BEHREN: We are going to order.

10 MR. HARDERS: We will read and sign.

11 THE COURT REPORTER: Do you want a copy?

12 MR. HARDERS: Scott Harders, yes, please.

13 (Deposition concluded at 3:07 p.m.)
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Under penalties of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered here.

Date

ROBERT ALLEN HAJICEK

STATE OF FLORIDA)
COUNTY OF LEE)

I, the undersigned authority, certify that ROBERT ALLEN HAJICEK personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 9th day of March, 2014.

Karen K. Crawford

Karen K. Crawford, CSR
Notary Public - State of Florida

* * * * * * * *
(STATE OF FLORIDA)
(COUNTY OF LEE)

I, KAREN K. CRAWFORD, Certified Shorthand Reporter, do hereby certify that ROBERT ALLEN HAJICEK was notified via U.S. mail and/or telephone that the transcript of the deposition was available for reading and signing; that as of this date the deponent has not read and signed the transcript for the following reason:

Dated this _____ day of _____ 2014.

(This transcript has been digitally signed.)

Karen K. Crawford

Karen K. Crawford, CSR, RPR, FPR

(STATE OF FLORIDA)
(COUNTY OF LEE)

I, Karen K. Crawford, Certified
Shorthand Reporter, do hereby certify that I was
authorized to stenographically report and
electronically record the foregoing deposition of
ROBERT ALLEN HAJICEK; that a review of the transcript
was requested; and that the transcript is a true record
of the testimony given by the witness.

I further certify that I am not a
relative, employee, attorney or counsel of any of
the parties, nor am I a relative or employee of any
of the parties' attorney or counsel connected with
the action, nor am I financially interested in the
action.

Dated this 9th day of March, 2014.

(This transcript has been digitally signed.)

Karen K. Crawford

Karen K. Crawford, CSR, RPR, FPR
Notary Public - State of Florida
Commission No. FF012105
My commission expires: 7-12-2017